**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 25.04.2023**

**CORAM:**

**THE HONOURABLE MS.JUSTICE P.T.ASHA**

W.P.(MD) Nos.9591, 9592 and 9593 of 2023
and
W.M.P.(MD) No.8534 of 2023

Plus Max Duty Free (Madurai) Pvt. Ltd.,
86/18, Royal Complex, Sankari Road,
Seetharampalayam, Tiruchengode,
Tamil Nadu-637 209,
Rep., by its Authorised Signatory,
S.Saravanan. .. Petitioner in all W.Ps.

Vs.

1.Principal Chief Commissioner of GST & Central Excise,
26/1, Uthamar Gandhi Road,
Thousand Lights West, Nungambakkam,
Chennai, Tamil Nadu-600 034.

2.The Commissioner of Commercial Taxes,
Ezhilagam, Chennai-600 005.

3.The Joint Commissioner (CT),
Madurai Division, Commercial Taxes Building,
Dr.S.V.K.S.Thangaraj Salai,
Madurai-625 020.

4.Airport Authority of India,
Madurai International Airport,
Madurai-625 012. .. Respondents in all W.Ps.

Prayer in W.P.(MD) No.9591 of 2023: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Declaration, declaring that no Goods and Services Tax (GST) is payable on the amounts paid by the petitioner to the 4th respondent under License Agreement dated 05.04.2017.

Prayer in W.P.(MD) No.9592 of 2023: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, directing the respondents to refund all Goods and Services Tax (GST) levied and collected on the amounts paid by the petitioner to the 4th respondent under License Agreement dated 05.04.2017.

Prayer in W.P.(MD) No.9593 of 2023: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, directing the respondents to refrain from collecting any Goods and Services Tax (GST) on the amounts paid by the petitioner to the 4th respondent under License Agreement dated 05.04.2017.

<u>In all cases</u>

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| For Petitioner | : | Mr.Suhrith Parthasarathy |
| For R1 | : | Mr.R.Nandhakumar<br>Senior Panel Counsel<br>assisted by<br>Ms.S.Ragavendre<br>Junior Standing Counsel |

<u>In W.P.(MD) Nos.9591 and 9592 of 2023</u>

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| For RR2 & 3 | : | Mr.J.John Rajadurai<br>Government Advocate |

<u>In W.P.(MD) No.9593 of 2023</u>

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| For RR2 & 3 | : | Mr.A.Sivanupandian<br>Government Advocate |

<u>In all cases</u>

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| For R4 | : | Mr.C.Godwin |

## **COMMON ORDER**

Considering the fact that the issue involved in all the three writ petitions is one and the same and the petitioner is also one and the same, a common order is passed in these writ petitions.

2.1. W.P.(MD) No.9591 of 2023 is filed for the issue of a Writ of Declaration, declaring that no Goods and Services Tax (GST) is payable on the amounts paid by the petitioner to the fourth respondent under License Agreement dated 05.04.2017.

2.2. W.P.(MD) No.9592 of 2023 is filed for the issue of a Writ of Mandamus, directing the respondents to refund all Goods and Services Tax (GST) levied and collected on the amounts paid by the petitioner to the fourth respondent under License Agreement dated 05.04.2017.

2.3. W.P.(MD) No.9593 of 2023 is filed for the issue of a Writ of Mandamus, directing the respondents to refrain from collecting any Goods and Services Tax (GST) on the amounts paid by the petitioner to the fourth respondent under License Agreement dated 05.04.2017.

3. It is the case of the petitioner that they are running Duty Free Shops in various Airports across the country. They state that they are a

subsidiary of a Malaysian company which has a long experience in running such shops throughout the world. The petitioner had taken on lease the premises within the precincts of the fourth respondent under an agreement dated 05.04.2017. The relevant clauses of the agreement read as follows:

> *"4. That the licence fee of Rs.685 per 1020 per sqm per month for 28 sqm and Rs.1020 per sqm per month for 31.25 sqm w.e.f. 01.04.2017 plus 10% Conservancy Charges plus 15% Service Tax per month for the total allotted area of 59.25 sqm shall be payable in advance on or before 20th day of each month. 10% annual cumulative escalation from 1st April every year is applicable. The Licence fee is subject to revision at the discretion of the Authority from time to time and such increase of licence fee shall be payable by the licensee without any protest or dispute.*
>
> *5. That the Licensee shall pay all rates, assessment, outgoing and other taxes whatsoever in respect of the said premises."*

4. It is the further case of the petitioner that originally they were paying service tax at 15% per month for the services being rendered by the fourth respondent and the petitioner was included in their invoice on paying the service tax to the fourth respondent. The petitioner was under the *bona fide* and erroneous belief that the licence fee, in the nature of rental, was subject to service taxes under Section 65(90a) read with Section 65(105)(zzzz) of the Finance Act, 1994. After execution of the agreement, the Central Excise and Service Tax Appellate Tribunal had passed an order on 28.09.2017 in the case of ***Commissioner of Service Tax – VII Vs. Flemingo Duty Free Shop Pvt. Ltd., [2018 (8) GSTL 181],*** wherein the Tribunal held that no service tax can be levied on the Duty Free Shops and the basis for the conclusion was that the shop was situate beyond the customs frontier and was outside India. Therefore, since the very levy itself was without jurisdiction, the petitioner requested refund of service tax. Meanwhile, in July, 2017, the Tamil Nadu Goods and Service Tax Act came into force. However, the GST Department took a stand contrary to the order of the Tribunal and stated that the sale had taken place within the Duty Free Shops is an interstate

supply, which is liable to IGST. Therefore, the petitioner has come forward with the present writ petitions.

5. Today, when the mater is called, it is brought to the notice of this Court that the issue has been set at rest and is no longer *res integra,* in the light of the judgment of the Hon'ble Supreme Court in ***Commissioner of CGST and Central Excise Vs. Flemingo Travel Retail Ltd. [Civil Appeal Diary No.24336/2022, dated 10.04.2022],*** wherein the Hon'ble Supreme Court has observed as follows:

> *"15. We have considered the above orders of the Tribunal, Central Government, High Courts and this court. Keeping in view the aforesaid judgments and Article 286 of the Constitution of India, we are also of the opinion that Duty Free Shops, whether in the arrival or departure terminals, being outside the customs frontiers of India, cannot be saddled with any indirect tax burden and any such levy would be unconstitutional. Therefore, if any tax is levied, the same cannot be retained and the Duty Free Shops would be entitled for refund of the same without raising any technical objection including that of limitation."*

6. In the light of the above, these writ petitions are allowed as prayed for. No costs. Consequently, connected miscellaneous petition is closed.

**25.04.2023**

NCC : Yes/No
Index : Yes/No
Internet : Yes

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To

1.The Principal Chief Commissioner of GST &
Central Excise,
26/1, Uthamar Gandhi Road,
Thousand Lights West, Nungambakkam,
Chennai, Tamil Nadu-600 034.

2.The Commissioner of Commercial Taxes,
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Dr.S.V.K.S.Thangaraj Salai,
Madurai-625 020.

**P.T.ASHA, J.**

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**W.P.(MD) Nos.9591, 9592 and 9593 of 2023**

**Dated: 25.04.2023**