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W.P.Nos.8194 of 2024 etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.10.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.Nos.8194, 8196, 8885, 13013 & 28369 of 2024 &
W.M.P.No.9142, 9144, 9892, 14171, 14173, 30936 of 2024

Royal Sundaram General Insurance Co. Limited,

Represented by its Authorized Signatory,

Mr.Vaibhav Kabra,

No.2/319, Vishranthi Melaram Towers,

Rajiv Gandhi Salai, Karapakkam,

Chennai, Tamil Nadu 600 097.

...Petitioner in W.P.No.8194 of 2024

M/s.Cholamandalam MS General Insurance Company Limited,

Represented by its Authorized Signatory,

Mr.Suresh Krishnan,

No.2, Dare House, N.S.C.Bose Road,

Parrys, Chennai 600 001.

.... Petitioner in W.P.No.8196 of 2024

United India Insurance Company Limited

Represented by Deputy General Manager

No.24, Whites Road, Chennai 600 014.

.... Petitioner in W.P.No.8885 of 2024

Tvl.Star Health and Allied Insurance Company Limited,

Represented by its Authorized Signatory,

Mr.Nilesh Kambli,

No.1, Star Insurance Towers,



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New Tank Street, Valluvarkottam High Road,
Nungambakkam, Chennai 600 034.

.... Petitioners in W.P.No.28369 & 13013 of 2024
Vs.

1. Union of India,
Through the Secretary, Ministry of Finance,
Department of Revenue,
North Block, New Delhi 110 001.
2. The Central Board of Indirect Taxes & Customs,
GST Policy Wing, North Block,
New Delhi 110 001.
3. The Additional Commissioner,
Office of the Commissioner of GST and Central Excise,
Chennai South Commissionerate,
MHU Complex, No.692, 5th Floor, Anna Salai,
Nandanam, Chennai 600 035.
4. Joint Director,
DGGI, Pune Zonal Unit,
Phoenix Building, Plot No.16-A,
CTS No.14, Bund Garden Road,
Opp. Residency Club, Pune 411 001.

... Respondents in W.P.Nos.8194 & 8196 of 2024

1. Union of India through
The Revenue Secretary,
Department of Revenue, Ministry of Finance,
Having its Office at North Block,
New Delhi 110 001.



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2. Goods and Services Tax Council,

Through Its Secretary

Tower-II, 5th Floor, Jeevan Bharti Building

New Delhi-110 001.

3. Deputy Director General,

Directorate General Of Goods And Services

Tax Intelligence,

Pune Zonal Unit,

No 14, Bund Garden Road, Opp Residency Club

Pune 411 001.

4. The Additional Commissioner,

GST and Central Excise,

Chennai South Commissionerate,

MHU Complex, No. 692, 5th Floor,

Annasalai, Nandanam, Chennai – 600035.

5. Goods And Services Tax Network,

A Government Enterprises havng its office at

Worldmark 1, Aerocity, Indira Gandhi International Airport,

New Delhi – 110 037.

...Respondents in W.P.No.8885 of 2024

The Deputy Commissioner (ST)-II,

Large Taxpayers Unit,

Integrated Commercial Taxes Buildings,

Nandanam, Chennai 600 035.

.... Respondent in W.P.Nos.13013 & 28369 of 2024



Prayer in W.P.No.8194 of 2024: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the impugned order in Original No.96/2023-GST-ADC-DGGI in C.No.Gexcom/Adjn/GST/ADC/1691/2023 with DIN 20231259TL000000DDCC dated 30.12.2023 passed by the 3rd respondent and to quash the same.

Prayer in W.P.No.8196 of 2024: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the impugned order in Original No.95/2023-GST-ADC-DGGI in C.No.Gexcom/Adjn/GST/ADC/1692/2023 with DIN 20231259TL0000333EC0 dated 30.12.2023 passed by the 3rd respondent and to quash the same.

Prayer in W.P.No.8885 of 2024: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records relating to the Impugned Order No. 97/2023-GST-AJC dated 30.12.2023 issued by The Additional Commissioner GST and Central Excise, Chennai South Commissionerate, the Respondent No.4, quash the same.

Prayer in W.P.No.28369 of 2024: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the Impugned Assessment Order in GSTIN/33AAJCS4517L1Z5/2019-20 dated 09.08.2024 passed by the Respondent and to quash the same.

Prayer in W.P.No.13013 of 2024: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the Impugned Assessment Order in GSTIN/33AAJCS4517L1Z5/2018-2019 dated 13.02.2024 passed by the



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Respondent and to quash the same.

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Appearance in W.P.No.8194 & 8196 of 2024

For Petitioner : Mr.R.V.Eswar
Senior Counsel for Mr.Raghavan Ramabadran
For Respondents: Mr.H.Siddarth
Standing Counsel

Appearance in W.P.No.8885 of 2024

For Petitioner : Mr.G.Shiva Kumar

Appearance in W.P.No.13013 & 28369 of 2024

For Petitioner : Mr.Raghavan Ramabadran
For Respondents: Mr.C.Harsha Raj
Additional Government Pleader (Taxes)

COMMON ORDER

Since the issue involved and the relief sought in all these Writ Petitions are identical in nature, the same were heard together and disposed of vide this common order.

2. Challenging the impugned orders dated 30.12.2023, 13.02.2024 & 09.08.2024, the petitioners have filed these Writ Petitions.

3. The issue involved in these writ petitions pertains to whether the Co-insurance premium and Reinsurance commission would be treated as supply



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or would be liable to pay the GST?

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4. Mr.R.V.Eswar, learned Senior Counsel appearing for the petitioners in W.P.Nos.8194 & 8196 of 2024 would submit that the Co-insurance premium and Reinsurance Commission cannot be treated as supply, thus, the petitioners are not liable to pay the GST. However, without accepting the said accept, the Assessing Officer had passed the impugned orders.

5. In this regard, the learned Senior Counsel referred to the recent amendment to Schedule III of the Central Goods and Service Tax, Act, 2017, (in short, CGST Act, 2017), wherein Item Nos.9 and 10 are added, which will come into effect from 01.11.2024. For proper appreciation, Item Nos.9 and 10 are extracted hereunder:

“9. Activity of apportionment of co-insurance premium by the lead insurer to the co-insurer for the insurance services jointly supplied by the lead insurer and the co-insurer to the insured in coinsurance agreements, subject to the condition that the lead insurer pays the central tax, the State tax, the Union territory tax and the integrated tax on the entire amount of premium paid by the insured.

10. Service by insurer to the reinsurer for which ceding commission or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer, subject



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to the condition that the central tax, the State tax, the Union territory tax and the integrated tax is paid by the reinsurer on the gross reinsurance premium payable by the insurer to the reinsurer, inclusive of the said ceding commission or the reinsurance commission.”

6. By referring the aforesaid item Nos.9 and 10, the learned Senior Counsel submitted that the co-insurance premium and re-insurance commission are excluded from the purview of supply of services. The department has now come up with a circular, dated 11.10.2024 in Circular No.236/30/2024-GST [F.No.CBIC-190354/149/2024-TO(TRU-II)-CBEC], whereby, it has been clarified, as under:

“The phrase 'as is where is' is generally used in the context of transfer of property and means that the property is being transferred in its current condition, whatever this condition happens to be and the transferee of property has accepted it with all its faults and defects, whether or not immediately apparent. In the context of GST, the phrase 'regularized on as is where is' basis means that the payment made at lower rate or exemption claimed by the taxpayer shall be accepted and no refund shall be made if tax has been paid at the higher rate. The intention of the Council is to regularize payment at a lower rate including nil rate due to the tax position taken by taxable person, as full discharge of tax liability. The tax position of a taxable person is reflected in the returns filed by the person where the applicable rate of tax (or relevant exemption entry) on a transaction/supply is



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declared.”

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7. Referring to the above, the learned Senior Counsel would submit that whatever the amount remitted as on date, even prior to the inclusion of the Item Nos.9 and 10 of Schedule III of CGST Act, 2017, no re-fund would be claimed, and at the same time, no tax has been paid on the Co-insurance Premium and Re-insurance Commission, and no tax further be collected after the introduction of Items No. 9 & 10 to Schedule III of CGST Act, 2017 on 'as is where is' basis condition. Therefore, he submitted that in view of the above clarification, the present impugned orders are liable to be quashed.

8. While making the above submissions, he would submit that there are five Writ Petitions being filed before this Court viz., W.P.Nos.8194, 8196, 8885, 13013 & 28369 of 2024, out of which, in three Writ Petitions, the petitioners therein in W.P.No.8194, 8196 & 8885 of 2024 have deposited a sum of Rs.10,00,00,000/-, Rs.12,00,00,000/- & Rs.13,50,00,000/- respectively, as per the direction of this Court. The said amounts are liable to be re-funded by the respondent-department. He would further submit that the said amounts have not been paid towards the discharge of tax liability. The petitioner has contested the entirety of the entire assessment orders. Therefore, the amounts deposited by



virtue of this Court order cannot be treated as the amount paid towards the discharge of the tax liabilities and it was paid under protest only. Therefore, he submitted that the said amounts cannot be utilized for the purpose of discharging for payment of tax by the Department immediately upon the deposit. In the event, if the petitioners succeeds, in the absence of any clarification, the said amount would be liable to be re-funded. In such being the case, the said amount cannot be considered as the amount paid towards tax. Hence, he requested this Court to issue appropriate directions to re-fund the said amount.

9. Per contra, Mr.H.Siddarth, learned Standing Counsel appearing for the respondents in W.P.Nos.8194 & 8196 of 2024 referred the prevailing legal provisions and the aforesaid circular dated 11.10.2024 and contended that prior to the inclusion of Item Nos.9 & 10 of Schedule III of CGST Act, 2017, whatever the amount received by the petitioners would be considered as a supply. However, he would submit that whatever the amount already paid before the Assessing Officer, the same will not be re-funded. Further, he would contend that since the pre-deposit was made only for the purpose of payment of tax by the assessee, the said amount was utilized for the discharge of the tax



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liability and the said amount would attract the phrase, 'as is where is' condition.

10. In response, Mr.R.V.Eswar, learned Senior Counsel for the petitioners submitted that the amounts deposited by the petitioners pursuant to the direction of this Court are not voluntary payments, and only upon the direction of this Court, the said amounts have been deposited. Since the said amounts paid not towards the discharge of tax liabilities, it is considered as deposit. Hence, he requested that, the same shall be directed to be re-funded. In such being the case, the question of deposit of such amount towards discharge of tax liability would not arise. Therefore, he submitted that the phrase 'as is where is' is not applicable to the present Writ Petitions.

11. Heard the learned Senior Counsel for the petitioners as well as the learned Standing Counsel and learned Additional Government Pleader for the respondents and perused the materials available on record.

12. Considering the submissions made by the learned counsel on either side, it appears that, the amounts deposited by the petitioner is not the amount paid towards the discharge of tax liability, and only upon the direction of this



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Court, the amounts stated supra have been deposited. Therefore, the amount so deposited cannot be considered as the amount paid for the purpose of discharge of tax liabilities. The amount so deposited can be utilized for the payment of tax only upon the final adjudication of the present Writ Petitions. There is no doubt that the amount, which was deposited subsequent to the order of this Court, would be the amount for discharging the output tax liabilities, however, the utilisation of the said amount has been deferred till the disposal of these petitions. As per the inclusion of Item Nos.9 and 10 to the Schedule III of CGST Act, 2017 read with Circular dated 11.10.2024, the amount, which was paid or utilized for the discharge of tax liabilities, would not be refunded by the Department. However, in this case, the utilisation of amount, which was deposited subsequent to the order passed by this Court, has been deferred till the disposal of these petitions and hence, as on date, the said amount is only a deposit. Therefore, as per the aforesaid inclusion of Item Nos.9 and 10 to the Schedule III of CGST Act, 2017, this Court is of the considered view that the co-insurance premium and re-insurance commission would not be considered as supply and thus, the petitioners are certainly entitled for refund.

13. In view of the the above findings, the impugned orders are liable to



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be set-aside. Accordingly, the impugned orders are set-aside. While setting aside the impugned orders, this Court directs the respondent- department to re-fund the amounts, which were deposited by the petitioners in W.P.No.8194, 8196 & 8885 of 2024 to an extent of Rs.10,00,00,000/- (Rs.10 Crores), Rs.12,00,00,000/- (Rs.12 Crores) & Rs.13,50,00,000/- (Rs.13.50 Crores) respectively, within a period of four weeks from the date of receipt of a copy of this order.

14. In the result, these Writ Petitions are allowed in aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

18.10.2024

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To

1. Union of India,

Through the Secretary, Ministry of Finance,

Department of Revenue,

North Block, New Delhi 110 001.

2. The Central Board of Indirect Taxes & Customs,

GST Policy Wing, North Block,

New Delhi 110 001.



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3. The Additional Commissioner,

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4. Joint Director,

DGGI, Pune Zonal Unit,
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CTS No.14, Bund Garden Road,
Opp. Residency Club, Pune 411 001.

5. Goods and Services Tax Council,

Through Its Secretary
Tower-II, 5th Floor, Jeevan Bharti Building
New Delhi-110 001.

6. Deputy Director General,

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Krishnan Ramasamy,J.,

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**W.P.Nos.8194, 8196, 8885,
13013 & 28369 of 2024**

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