



W.P.Nos.16735 & 16737 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.08.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.Nos.16735 & 16737 of 2023

and

W.M.P.Nos.16013 to 16015 of 2023, 26105 & 26106 of 2024

M/s.New Tea Exports Private Limited,
15A/172, Kalaippa Kalyana Mandapam,
Chinna Thottam,
Urumandampalayam,
G.N.Mills Post,
Coimbatore 641 029.
Presently at
Door No.400, Sarkarsamkulam,
Thudiyalur Road, Athipalayam,
Coimbatore 641 110.

...Petitioner in both W.Ps'

Vs.

The Assistant Commissioner (ST)
Thudiyalur Assessment Circle,
Coimbatore.

... Respondents in both W.Ps'

Prayer in W.P.No.16735 of 2023: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, call for the records of the impugned assessment order in Ref.No.ZD3307210016950 in DRC07 dated 19.07.2021 for assessment year 2017-18 from the files of the first respondent herein, quash the same.



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Prayer in W.P.No.16737 of 2023: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, call for the records of the impugned recovery notice in 33AADCN6041J1ZL dated 05.05.2023 for assessment year 2017-18 from the files of the first respondent herein, quash the same.

(Appearance in both W.P.s')

For Petitioner : Ms.Aparna Nandakumar

For Respondent : Ms.Amirtha Poonkodi Dinakaran
Government Advocate (Tax)

COMMON ORDER

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

2. Challenging the impugned order dated 19.07.2021 and the impugned recovery notice dated 05.05.2023 passed by the respondent for the assessment year 2017-2018, the petitioner has filed these Writ Petitions.

3. Ms.Amirtha Poonkodi Dinakaran, learned Government Advocate (Tax), takes notice on behalf of the respondent.



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4. Ms.Aparna Nandakumar, learned counsel for the petitioner submitted that, subsequent to the impugned order, the entire tax amount has been paid by the petitioner. Further, she would submit that the petitioner had not received any notice with regard to personal hearing. Therefore, the petitioner was not in position to file a reply to the show cause notice, since the said notice was only uploaded through GST common portal in “Additional Notices Column” tab. As the petitioner had no knowledge about the same, the petitioner failed to submit its reply. Under these circumstances, the present impugned ex-parte order dated 19.07.2021 came to be passed by the respondent, without an opportunity to the petitioner to file the reply and without affording personal hearing to the petitioner. It is also submitted that, pursuant to the impugned order dated 19.07.2021, the respondent issued the impugned recovery notice dated 05.05.2023 for the assessment year 2017-2018, demanding the payment of Rs.74,27,921/- without giving the break up of the disputed tax, disputed penalty and disputed interest and without acknowledging the fact that the tax amount of Rs.26,01,911/- has already been paid by the petitioner. Hence, she sought appropriate order from this Court for affording an opportunity to the petitioner to present the case by filing a suitable reply and participate in the



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proceedings.

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5. Ms.Amirtha Poonkodi Dinakaran, learned Government Advocate appearing for the respondent, fairly submitted that though an ex-parte order was passed by the respondent, the petitioner has remitted the entire tax amount, and the issue involved in these Writ Petitions is only with regard to imposition of penalty and interest. Further, she would submit that recently in 53rd GST Annual Council meeting a decision was taken to extend the time limit for payment of tax upto 31st March 2025, but the same is yet to be notified in the form of Section 128(A) of the Central Goods and Services Tax Act (in short, 'the Act'). Hence, she submitted that taking into consideration all those things, it would be appropriate to provide one more opportunity to the petitioner to file a reply and to explain the case before the respondent.

6. The learned Government Advocate for the respondent further would submit that the tax liability has been discharged only by virtue of reversing the Input Tax Credit (in short 'ITC'), but not by virtue of payment of tax.

7. Intervening at this stage, the learned counsel for the petitioner



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submitted that the entire tax liability has been paid by the petitioner by reversal of wrongly availed ITC, and hence, the petitioner is not liable to pay any amount.

8. Heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondent and perused the materials available on record.

9. It is not disputed that the petitioner has already paid the entire tax demand, and is only seeking an opportunity to file the reply to the show cause notice and personal hearing with respect to imposition of interest and the penalty, which the petitioner claims that they are not liable to pay. Even otherwise, as per the decision taken in the 53rd GST Council Meeting, the time is extended upto 31st March 2025. By applying the proposed amendment to Section 128(A) of the Act, the petitioner is not liable to pay any amount, since the enough amount is available in the ITC.

10. Considering the entire conspectus of the matter, this Court is inclined to set aside the impugned order dated 19.07.2021 passed by the



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respondent, with the following directions:-

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(i) The order impugned herein is set aside and the matter is remanded to the respondent in respect of the assessment years 2017-2018 for fresh consideration. In view of the setting aside of the order dated 19.07.2021, the consequential final notice dated 05.05.2023 is also set-aside.

(ii) The petitioner shall file their reply/objection along with the required documents, if any, within a period of four weeks after the date of receipt of a copy of this order.

(iii) On filing of such reply/objection by the petitioner, the respondent shall consider the same and issue a 14 days clear notice by fixing the date for personal hearing to the petitioner and thereafter, pass appropriate orders on merits and in accordance with law, as expeditiously as possible, after hearing the petitioner.

(iv) Owing to the proposed amendment to Section 128(A) of the Act, extending the time limit and the fact that enough ITC is available with the petitioner, and hence, the attachment of petitioner's Bank account is ordered to be lifted. The respondent is directed to de-freeze the petitioner's Bank account immediately upon the production of a copy of this order, in case if the petitioner's Bank account is attached.

11. With the above directions, these Writ Petitions are disposed of. No

costs. Consequently, connected Miscellaneous Petitions are closed.



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23.08.2024

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

jd

Note: Issue order copy on 28.08.2024.

To

The Assistant Commissioner (ST)

Thudiyalur Assessment Circle,

Coimbatore.

Krishnan Ramasamy,J.,

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