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W.P.Nos.28744 & 28744 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2024

Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.Nos.28744 & 28749 of 2024

and

W.M.P.Nos.31348, 31349, 31354 & 31355 of 2024

S.P.Mani and Mohan Diary (India) Pvt. Ltd.,
rep. by its Joint Managing Director.

...Petitioner

Vs.

The Assistant Commissioner (ST) (FAC) (Inspection)
SF No.400/1, 7, 8, 46,
Pudur B Village, Erode – 2.

...Respondent

Prayer in W.P.No.28744 of 2024:-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records relating to impugned order in Reference No.ZD330624295450E dated 25.06.2024 passed by the respondent and to quash the portion of the order by which the respondent has confirmed the tax to the tune of Rs.5,12,73,268/- and imposed equal amount of penalty under Section 74 of TNGST Act apart from demand of interest.



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Prayer in W.P.No.28749 of 2024 :

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records relating to impugned order in Reference No.ZD3306242945727 dated 25.06.2024 passed by the respondent and to quash the portion of the order by which the Respondent has confirmed the tax to the tune of Rs.5,98,02,972/- and imposed equal amount of penalty under Section 74 of TNGST Act apart from demand of interest.

For Petitioner : Mr.T.Ramesh

For Respondent : Mrs.K.Vasanthamala
Government Advocate (T)

Common Order

The challenge in both Writ Petitions is to the orders dated 25.06.2024 passed by the respondent and to quash the portion of the order, in and by which, the respondent has confirmed the tax to the tune of Rs.5,12,73,268/- and Rs.5,98,02,972/- respectively and imposed equal amount of penalty under Section 74 of TNGST Act apart from demand of interest.



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2. As the issue involved in both the Writ Petitions is identical in nature, with consent, the Writ Petitions are taken up together and disposed of vide this Common Order at the stage of admission itself.

3. Mr.T.Ramesh, learned counsel for the petitioner would submit that the petitioner has been issued with show cause notice dated 02.03.2024 notifying 10 defects, the petitioner, on receipt of the said show cause notice, filed replies dated 04.01.2024 and 13.02.2024 in the GST Portal, answering to each defects, based on which, the respondent passed Assessment Orders dated 25.06.2024, under Section 74 of the TNGST Act, whereby, proposals to recover tax with regard to 7 defects were dropped, and in respect of two defects, which were accepted by the petitioner and tax was paid, penalty alone was imposed, however, so far as one defect is concerned, viz., defect No.8, the respondent erroneously confirmed the demand on the alleged outward suppression of taxable turnover along with interest and equal amount of penalty. Aggrieved against which, the petitioner has filed the present Writ Petitions.



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3.1 The learned counsel appearing for the petitioner assailed the impugned orders by contending that the demand of tax with respect to Defect No.8 has been confirmed solely on the ground that there is a decrease in taxable turnover for the periods from 2020-21 and 2021-22 when compared to the turnover for the period 2019-20 while consumption of power remains more or less the same. The learned counsel submitted that owing to Covid-19, there was close down, resulting in the goods being stagnated in the godowns, and that since the petitioner is carrying out the manufacturing process as a Job Worker, the final products manufactured for the third party has to be stored in the deep freezer facility installed in the petitioner's business premises till the final products are supplied to the principal suppliers, viz., Co-operatives Societies, i.e. for 200 MT under (-20 degree Celsius) which contributed to the excess consumption of electricity, and despite the fact that the said aspect was answered in the form of reply, stating that EB units consumed are not directly linked with the sales of the petitioner and explained the reason for the difference in turnover during the period subject period with supporting documents, the respondent failed to consider the said vital aspect and passed the impugned orders, that too, in



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respondent passed the impugned order, levying higher rate of tax @ 12% and penalty under Section 74 of the TNGST. Thus, by stating so, the learned Government Advocate (T) requested this Court to dismiss the Writ PetitionS, or else to direct the petitioner to avail alternate remedy of filing Appeals before the Appellate Authority challenging the impugned orders.

5. Heard Mr.T.Ramesh, learned counsel appearing for the petitioner and Mrs.K.Vasanthamala, learned Government Advocate (T) for respondent, who takes notice on behalf of the respondent and perused the materials available on record.

6. On perusal of records, it is seen that the petitioner is engaged in the manufacturing, wholesale and retail business of milk and milk products and registered under the TNGST Act; that petitioner's place of business was inspected by the Intelligent Officials Wing on 02.08.2023, and a report was filed, pursuant to which, the respondent issued Show cause notice dated 02.03.2024, notifying 10 defects. The petitioner, on receipt of such show cause notice, filed reply, answering to each defects along with supporting



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documents. The respondent, based on the said reply passed Assessment Orders dated 25.06.2024, under Section 74 of the TNGST Act, whereby, the proposals to recover tax with regard to 7 defects were dropped, and in respect of two defects, pertaining to which, tax liability was accepted by the petitioner and tax was paid, penalty alone was imposed, however, so far as one defect is concerned, viz., defect No.8, the respondent confirmed the proposed tax on the alleged outward suppression of taxable turnover along with interest and equal amount of penalty.

7. Aggrieved against the said impugned orders, the present Writ Petitions filed, seeking to quash the portion of the order, in and by which, the respondent has confirmed the tax to the tune of Rs.5,12,73,268/- and Rs.5,98,02,972/- respectively and imposed equal amount of penalty under Section 74 of TNGST Act with interest.

8. There is no dispute on the aspect that during the year 2020, Covid-19 was at peak, during which period, there was complete shut down. The petitioner is engaged in the business of manufacture/sale of milk and



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milk allied products. Due to Covid-19 lock down restrictions, the petitioner could not run the business successfully as they did before, which resulted in the goods being stagnated in the godowns, and that since the petitioner is carrying out the manufacturing process as a Job Worker, the final products manufactured for the third party has to be stored in the deep freezer facility installed in the petitioner's business premises till the final products are supplied to the principal suppliers, viz., Co-operatives Societies, i.e. for 200 MT under (-20 degree Celsius) for which purpose, the petitioner has to run the plant for 24 hours for storage of the goods under -20 degree Celsius, which contributed to the excess consumption of electricity, and despite the fact that the said aspect was answered by the petitioner in the form of reply, clearly stating that EB units consumed are not directly linked with the sales of the petitioner and also explained the reason for the difference in turnover during the period subject period with supporting documents, the respondent failed to consider the said vital aspect and passed the impugned orders.

8.1 In fact, this Court also feels that the respondent ought to have taken into consideration of the aforesaid vital aspect before passing the



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impugned orders, with regard to Defect No.8, in the absence of any contrary evidence available to substantiate the alleged suppression of sale, as rightly pointed out by the learned counsel for the petitioner. Hence, this Court is inclined to set aside the impugned orders, insofar as it relates to Defect No.8 alone is concerned.

9. Accordingly, this Court passes the following orders:-

i) The impugned orders dated 25.06.2024 are set aside, insofar as it concerns Defect No.8 alone.

ii) Consequently, the matter is remanded to the respondent for re-consideration with regard to the said defect alone.

iii) In the event, the petitioner intends to file additional reply, the same shall be filed along with relevant documents within a period of 15 days weeks from the date of receipt of a certified copy of this order.

iv) After the expiry of said 15 days, the respondent is directed to consider the same and issue a 14 days clear notice by fixing the date of personal hearing to the petitioner and after hearing the petitioner in full, shall decide the matter and pass orders in accordance with law.



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v) However, it is made clear that the respondent, without waiting for the order copy, is orally directed by this Court to take necessary steps for de-freezing the petitioner's bank account forthwith.

8. In the result, both Writ Petitions are allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

27.09.2024

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Index : yes/no

Neutral Citation : yes/no

Note to Office : Issue/Upload order on .10.2024.

To

The Assistant Commissioner (ST) (FAC) (Inspection)
SF No.400/1, 7, 8, 46,
Pudur B Village, Erode – 2.

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Krishnan Ramasamy,J.,

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