



W.P.(MD) No.9041 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.04.2024

CORAM

**THE HON'BLE MR.JUSTICE C.SARAVANAN**

**W.P.(MD) No.9041 of 2024**

**&**

**W.M.P(MD).No.8258 of 2024**

M/s. The BEST RECHARGE  
Rep by its Proprietrix  
Mrs.Monna Mohammed Sahira Banu  
W/o Mahaboobjohn  
No.129, North Car Street  
Vikramasingapuram  
Ambasamudram  
Tirunelveli District

... Petitioner

Vs.

- 1 The Deputy Commissioner (ST)  
GST (Appellate Authority)  
Deputy Commissioner Office  
Madurai & Tirunelveli  
Tirunelveli District
- 2 The Commercial Tax Officer  
Commercial Tax Office  
Ambasamuthiram  
Tirunelveli District
- 3 The State Tax Officer  
State Tax Office  
Ambasamuthiram  
Tirunelveli District

... Respondents



W.P.(MD) No.9041 of 2024

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified mandamus for a direction to call for the records on the file of the 1<sup>st</sup> respondent and quash the appeal No.AP/GST/T/13/2023 dated 07.03.2024 passed by the 1<sup>st</sup> respondent consequently direct the 2<sup>nd</sup> respondent to waiver the all further payments demand by the 2<sup>nd</sup> respondent within stipulated period.

For Petitioner : Mr.R.Senthil Kumar

For Respondents : Mr.R.Suresh Kumar, AGP

### **ORDER**

Writ Petition is filed for issuance of a Writ of Certiorarified mandamus for a direction to call for the records on the file of the 1<sup>st</sup> respondent and quash the appeal No.AP/GST/T/13/2023 dated 07.03.2024 passed by the 1<sup>st</sup> respondent consequently direct the 2<sup>nd</sup> respondent to waiver the all further payments demand by the 2<sup>nd</sup> respondent within stipulated period.

2. The petitioner has filed this Writ Petition against the impugned order dated 07.03.2024 in Appeal No.AP/GST/T/13/2023. By the aforesaid order, the 1<sup>st</sup> respondent has dismissed the appeal of the petitioner against the order dated 02.09.2022 passed by the 3<sup>rd</sup> respondent



W.P.(MD) No.9041 of 2024

in his proceedings bearing Ref.No.GSTIN:33FVJPS4934J1Z1/2019-20.

By the aforesaid order, the 3<sup>rd</sup> respondent has called upon the petitioner to pay interest for a sum of Rs.7,53,258/-as detailed below:

|              | CGST    | SGST    | TOTAL   |
|--------------|---------|---------|---------|
| TAX          | 823743  | 823743  | 1647486 |
| Interest@24% | 657550  | 657550  | 1315100 |
| Total amount | 1481293 | 1481293 | 2962586 |
| Paid         | 1104664 | 1104664 | 2209328 |
| Balance      | 376629  | 376629  | 753258  |

The specific case of the petitioner is that the petitioner had surrendered the registration which is also accepted by the respondent by their order dated 20.12.2022 in their proceedings bearing reference in Form GST REG-19 under Rule 22(3) of the GST Rule,2017. It is submitted that the amount was paid prior to the order dated 02.09.2022 bearing Ref.No.GSTIN:33FVJPS4934J1Z1/2019-20 of the 3<sup>rd</sup> respondent in good faith and bonafide belief that the respondent would not demand tax or further interest. It is submitted that the appeal filed by the petitioner before the 1<sup>st</sup> respondent has been wrongly rejected and since the Appellate Tribunal has not been constituted has filed this Writ Petition to review the order passed by the 1<sup>st</sup> respondent Deputy Commissioner(ST) GST (Appellate Authority)/1<sup>st</sup> respondent herein.



W.P.(MD) No.9041 of 2024

3. Opposing the prayer, learned counsel for the respondents would submit that there is no estoppel and in any event petitioner is duty bound to pay interest on the admitted tax liability. It is therefore submitted that there is no scope for reducing the tax liability or the interest thereon. It is submitted that question of reducing the interest or giving the petitioner a liberty to pay interest in installment cannot be granted by the 1<sup>st</sup> respondent in his Appellate jurisdiction U/s. 107 of the TNGST Act, 2017. Learned counsel for the respondents would submit that if at all it is open for the petitioner to approach the Commissioner U/s. 80 of the TNGST Act, 2017.

4. I have considered the arguments advanced by the learned counsel for the petitioner and the respondent. The operative portion of the impugned order reads as under:

**“ 4.ORDER**

*Tvl. Best Recharge (herein after referred as Appellant) 88B, West Car Street Vikramasingapuram, Tirunelveli 627 425. The tax payer has availed excess ITC than available in GSTR2A hence the Adjudicating authority has levied tax and interest. The appellant has agreed and reversed the tax but has filled. peal for the levy of interest.*



W.P.(MD) No.9041 of 2024

*The appellant has mentioned that the Business is not good and requested to pay the interest @ 18% and Rs.5000/- in monthly installment.*

*The interest for wrong claim of ITC is levied u/s 50(3) of the act for which interest is levied @18% the relevant section is read below:*

*3) Where the input tax credit has been wrongly availed and utilised, the registered per shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent, as may be notified by the Government on the recommendations of the Council, and the interest shall be calculated, in such otanne as may be prescribed.*

*Hence the reduction of interest rate cannot be considered. Further the appellant has requested to pay the interest in instalment in each month. The section 80 of the act specifies that the commissioner only has the power to determine the payment of tax in instalment. The relevant section is read below:*

*Payment of tax and other amount in instalments.*

*80. On an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under section 50 and subject to such conditions and*



W.P.(MD) No.9041 of 2024

*limitations as may be prescribed:*

*Provided that where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery.*

*Hence the appeal filed by the appellant cannot be considered and the order passed by the adjudicating authority is valid.”*

5. In my view the order does not call for any interference. The order does not suffer from any of the vices which would render the impugned order amenable/susceptible to a review under Art.226 of the Constitution of India. The order is also well reasoned and also does not suffer from any short coming. Therefore, the Writ Petition is liable to be dismissed. However, considering the fact that the petitioner has paid the disputed tax on 27.07.2022, the only relief the petitioner can seek is for payment of interest in installment. As per Sec.80 of the TNGST Act,2017, the petitioner has to approach the Commissioner. Considering the same, this Writ petition is dismissed with liberty to the petitioner to approach the Commissioner within a period of 30 days from the date of receipt of this order.



W.P.(MD) No.9041 of 2024

6. Pending disposal of such application further recovery proceedings shall be kept in abeyance. It is made clear that in case if the petitioner fails to file such an application within 30 days from the date of receipt of a copy of this order, the respondents are at liberty to proceed against the petitioner in accordance with law. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

15.04.2024.

Index: Yes/ No

Neutral Citation: Yes / No

kpr

Copy To:

- 1 The Deputy Commissioner (ST)  
GST (Appellate Authority)  
Deputy Commissioner Office  
Madurai & Tirunelveli  
Tirunelveli District
- 2 The Commercial Tax Officer  
Commercial Tax Office  
Ambasamuthiram  
Tirunelveli District
- 3 The State Tax Officer  
State Tax Office  
Ambasamuthiram  
Tirunelveli District



WEB COPY



W.P.(MD) No.9041 of 2024

**C.SARAVANAN, J.**

kpr

**W.P.(MD) No.9041 of 2024**

**15.04.2024**