BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2024

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No19506 to 19508 of 2023
and
W.M.P.(MD) Nos.16135, 16137 & 16139 of 2023

M/s.Uvaraj Industries,
Rep. by its Managing Partner,
Mr.D.Vetriselvan,
SF 41/4, 49/1, Kandhalur,
Trichy – 620 025. ... Petitioner in all W.Ps.

Vs.

The State Tax Officer,
Ponmalai Assessment Circle,
Office of the State Tax Officer,
Trichy – 620 020. ... Respondent in all W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari calling for the records of the impugned Notices bearing Pa.Sa.No.33AACFU2202N1ZE/2017-2018 dated 24.07.2023, Pa.Sa.No.33AACFU2202N1ZE/2019-2020 dated 24.07.2023 and Pa.Sa.No.33AACFU2202N1ZE/2018-2019 dated 24.07.2023 passed by the respondent and quashing the same.

For Petitioner
in all W.Ps. : Mr.P.Thangaraju

For Respondent
in all W.Ps. : Mr.R.Sureshkumar
Additional Government Pleader

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COMMON ORDER

By this common order, all these 3 Writ Petitions are being disposed of.

2. In these Writ Petitions, the petitioner has challenged the following impugned recovery Notices dated 24.07.2023 issued by the respondent:-

Sl. No	W.P.(MD) No.	Ref. No. of the impugned Notice	Assessment Year
1	19506/2023	Pa.Sa.No.33AACFU2202N1ZE/2017-2018	2017-2018
2	19507/2023	Pa.Sa.No.33AACFU2202N1ZE/2019-2020	2019-2020
3	19508/2023	Pa.Sa.No.33AACFU2202N1ZE/2018-2019	2018-2019

3. It appears that the petitioner had suffered the following adverse Orders-in-Original in the hands of the Original Authority:-

Sl. No	W.P.(MD) No.	Reference No. of the Order-in-Original	Date of the order	Assessment Year
1	19506/2023	ZA3310210059276	20.10.2021	2017-2018
2	19507/2023	ZD331221003459V	20.12.2021	2019-2020
3	19508/2023	ZD3310210023659	22.10.2021	2018-2019

4. Against the above said orders, the petitioner preferred appeals before the Appellate Authority which were dismissed *vide* the following orders:-

Sl. No	W.P.(MD) No.	Reference No. of the Order-in-Appeal	Date of the Order-in-Appeal	Assessment Year
1	19506/2023	AP/GST/149/2022	05.07.2023	2017-2018
2	19507/2023	AP/GST/148/2022	05.07.2023	2019-2020
3	19508/2023	AP/GST/150/2022	05.07.2023	2018-2019

5. Consequently, the impugned recovery Notices were issued by the respondent seeking to recover the amount confirmed *vide* Orders-in-Original as affirmed by the Orders-in-Appeal of the Appellate Deputy Commissioner (ST), Trichy. Challenging the same, the petitioner is before this Court as no GST Tribunal has been constituted. Though the GST Tribunal has recently been notified, it is yet to come into force.

6. The petitioner would have been required to deposit 20% under Section 112 of the GST Act over and above the amount that was paid by the petitioner at the stage of appeal before the Appellate Commissioner under Section 107 of the GST Act.

7. According to the petitioner, the petitioner has deposited more than 20% of the disputed tax as is contemplated under Section 112 of the TNGST Act, 2017.

8. The learned counsel for the petitioner would place reliance on the decision of the Bombay High Court in **Rochem India Pvt. Ltd.** Vs. **The Union of India and others**, [2023] 111 GSTR 218 (Bom.) : 2023 [73] G.S.T.L. 528, wherein, the Court has held as under:-

> "***10***. *The Chairman of the Board, in the affidavit, has indicated that no hardship would be caused to the taxpayers because of the non-constitution of the Tribunal. Reading the affidavit along with Circular, it is clear that the Government does not intend that taxpayers are prejudiced for want of the Tribunal. With that intent, the period of limitation has been extended. As a corollary of the intention expressed in the affidavit and the Circular, it follows that the appealable orders (to the Tribunal) would not be implemented till the Tribunal becomes functional. That being the*

position, the writ petitions do not need to remain pending in this Court. Some time after the tribunal becomes functional as above can be given.

***11**. It would be advisable, to avoid further complications, that the Respondent-Board issues instructions to incorporate Clause 4.2 of the Circular dated 18 March 2020 in each order which is appealable to the Appellate Tribunal constituted under Section 109 of the Act. This would guide the aggrieved parties as to the future course of conduct and reduce needless litigation in the form of filing writ petitions such as the present ones. The Learned ASG states that this option would be considered.*

***12**. Therefore, we dispose of the Petitions as follows.*

a) The period of filing the Appeal will stand extended as indicated in Clause 4.2 of the Circular dated 18 March 2020.
b) The impugned order will not be given effect until two weeks after the period prescribed for filing an appeal as under Clause 4.2 of the Circular dated 18 March 2020 is over.

***13**. All contentions of the parties are kept open, including a challenge to the validity of the provisions, if any.*"

9. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

10. Considering the fact that the petitioner has deposited more than 20% of the disputed tax, the impugned recovery Notices issued to the petitioner shall be kept in abeyance subject to the condition that the petitioner either files appeals before the GST Tribunal in case GST Tribunal is constituted, within a period of 30 days from the date of receipt of a copy of this order or in the alternative, the petitioner files Writ Petitions challenging the respective Orders-in-Appeals and/or Orders-in-Original, within such time.

11. In which case, the impugned Notice seeking to recover the amount shall stand stayed pending further orders in the Appeals before the GST Tribunal or in the Writ Petitions, as the case may be.

12. Accordingly, these Writ Petitions stand disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

26.06.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

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Copy To:

The State Tax Officer,
Ponmalai Assessment Circle,
Office of the State Tax Officer,
Trichy – 620 020.

C.SARAVANAN, J.

JEN

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