BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.07.2024**

CORAM:

**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

**W.P.(MD) No.24726 of 2022**
**and**
**W.M.P.(MD)Nos.18827 & 18829 of 2022**

M/s.Sree Prema Vilas Tirunelveli Lala Sweet Stall,
Represented by its Managing Partner Prabaharan. ... Petitioner

Vs.

The Deputy Commissioner of CGST & Central Excise,
Madurai Division,
No.5, V.P.Rathinasamy Nadar Road,
Bibikulam,
Madurai – 625 002. ... Respondent

**<u>PRAYER:</u>** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records pertaining to the proceedings of the respondent's impugned order in DIN:20220959XO000000BCCB dated 20.09.2022 and quash the same as illegal and devoid of merits.

For petitioner : Mr.Raja.Karthikeyan
For respondent : Mr.N.Dilip Kumar
Senior Standing Counsel
Asst. by Mr.K.Prabhu
Junior Standing Counsel

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## ORDER

In this Writ Petition, the petitioner has challenged the impugned Order-in- Original No.1/22-GST MAD-GST-000-DC-01/2022 dated 20.09.2022.

2. By the impugned order, the respondent has confirmed the following amount due payable by the petitioner:

**ORDER**

(i) I confirm the demand of GST amount Rs.78,74,766/- [Rupees Seventy Eight lakh seventy four thousand seven hundred and sixty six only] on M/s. Sree Prema Vilas Tirunelveli Lala Sweets Stall Cum Restaurant, Madurai, on the Outward Supplies of taxable goods for the years from 2017-18 ( from July 2017) to 2018-19 ( upto October 2018) under Section 74(9) of CGST Act, 2017/ Section 74(9) of TNGST Act, 2017 and I appropriate an amount of Rs.74,32,540/- paid through GSTR-3B returns subsequently after the conduct of the simultaneous search operations by the Department against the tax demanded;

(ii) I confirm the demand interest of Rs. 11,08,324/- [Rupees Eleven lakh eight thousand three hundred and twenty four only] under Section 50(1) of the CGST Act, 2017/Section 50(1) of the TNGST Act, 2017 for delayed payment GST of Rs.74,32,540/- which was paid subsequently after the conduct of simultaneous search operations by the Department;

(iii) I confirm the demand of **interest on differential GST amount of Rs.4,42,226/- not paid**, for the period which the payment is delayed to Government exchequer under Section 50(1) of the CGST Act,2017/Section 50 of the TNGST Act, 2017.

(iv) I impose **Penalty of Rs.78,74,766/-** [Rupees Seventy Eight lakh seventy four thousand seven hundred and sixty six only] under Section 122(iii) of the CGST Act, 2017/ Section 122 (iii) of the TNGST Act, 2017 for the failure to remit the GST collected to the Government beyond a period of three months from the date on which such payment becomes due with the intent to evade the payment of tax.

3. The case of the petitioner is that the petitioner is assessed to State Authority and that the State Authority has also passed an order for the same period on 07.06.2022 vide in Form GST APL-01 bearing reference in Order No.ZD330622004178R. By the aforesaid order, the State Authority has concluded that the petitioner has to pay only a sum of Rs.3,51,336/- (Rs.1,75,668/- x 2) towards interest on account of the belated payment of tax for the assessment year 2017-18.

4. It is submitted that the impugned proceedings of the respondent is clearly without jurisdiction in as much as the petitioner is under the administrative control of the State GST Authorities whereas the impugned order has been passed

by the Central GST Authority and therefore, it is liable to be quashed in the light of the decision of this Court in ***Tvl.Vardhan Infraastructure vs. The Special Secretary reported in 2024 (3) TMI 1216.***

5. It is further submitted that the petitioner cannot be mulcted with liability twice; one by the Central Authority and for the another time by the State Authority. It is therefore submitted that the impugned order is liable to be quashed.

6. That apart, it is submitted that the petitioner has discharged the tax liability, although belatedly has also paid the interest due and payable of the belated payment of tax and therefore, the imposition of penalty on the petitioner is unjustified.

7. The learned counsel for the petitioner submits that it is without prejudice the rights of the petitioner in terms of the decision of this Court in ***Tvl.Vardhan Infraastructure'***s case (cited supra).

8. Defending the submissions, the learned Senior Standing Counsel for the respondent would submit that the decision of this Court rendered in ***Tvl.Vardhan Infraastructure'***s case (cited supra) has been appealed against before the Hon'ble Division Bench of this Court and the Hon'ble Division Bench has stayed the aforesaid order on 28.06.2024 in W.A.No.1805 of 2024.

9. It is therefore submitted that whether the State Authority or the Central Authority, the tax due and payable are both under the provisions of CGST Act, 2017 and SGST Act, 2017.

10. I have considered the arguments advanced by the learned counsel for the petitioner and Senior Standing Counsel for the respondent.

11. The operative portion of the impugned order itself indicates that the petitioner has paid a sum of Rs.74,32,540/- as against the tax demand of Rs.78,74,766/- leaving the balance of Rs.4,42,226/-. This amount has to be paid by the petitioner without prejudice to the rights of the petitioner pursuant to the remand order.

12. It is noticed that the petitioner is also required to pay a sum of Rs.11,08,324/-. The petitioner was directed to pay a sum of Rs.3,00,000/- at the time of admission in this Court on 01.11.2022. It is not clear whether the petitioner has complied with the same. The delay in payment of tax attracts interest and therefore, the petitioner has to pay the interest. This amount is, therefore, also directed to be paid by the petitioner without prejudice to the rights of the petitioner if the amounts have already not been paid by the petitioner.

13. As far as the imposition of penalty under Section 122 of the GST Act, 2017 is concerned, in the 53$^{rd}$ Meeting of the GST Council held on 22.06.2024, the Council has recommended certain concessions qua interest. Notifications are expected to be issued.

14. It is expected that the Governments *i.e.*, the Central Government and the respective State Governments will issue notifications to implement the recommendation of GST Council in its recommendation in the 53$^{rd}$ GST council on 22.06.2024 for the assessment years 2017-18 and 2018-19.

15. Under these circumstances, this Writ Petition is disposed of by directing the petitioner to pay the differential tax of Rs.4,42,226/-, which remains unpaid. Since the payment of interest is axiomatic and consequential, the petitioner shall also pay the interest of Rs.11,02,324/- less the amounts, that the petitioner may have paid pursuant to the interim order of this Court at the time of admission dated 01.11.2022 and less the amounts, that the petitioner may have paid at the time of filing of appeal for the assessment year 2017-18 against the order dated 07.06.2022 in Order No.ZD330622004178R.

16. As far as the penalty is concerned, the respondents are directed to pass a fresh orders on merits and in accordance with law within six months from today. In case the recommendations of the 53rd GST council meeting is implemented, the penalty may be dropped.

17. The differential amount of tax due for a sum of Rs.4,42,226/- and the interest of Rs.11,08,324/- shall be paid by the petitioner within a period of two months from the date of receipt of a copy of this order.

This Writ Petition is disposed of, with above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes / No
apd

**03.07.2024**

To
The Deputy Commissioner of CGST & Central Excise,
Madurai Division,
No.5, V.P.Rathinasamy Nadar Road,
Bibikulam,
Madurai – 625 002.

**C.SARAVANAN, J.**

apd

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