IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.2040 of 2024
and
W.M.P.No.2173 of 2024

GE T & D India Limited,
Represented by its Authorized Signatory
Varun Malhotra ... Petitioner

Vs.

The Deputy Commissioner of GST & Central Excise,
Pallavaram Division,
Sri Devi Temple Towers,
No.6, Sembakkam 2nd Main Road,
Sembakkam,
Chennai – 600 073. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records in Order-in-Original No.13/2023 dated 13.10.2023 passed by the Respondent and quash the same.

For Petitioner : Mr.Joseph Prabakar

For Respondent : Mr.K.Mohanamurali
Senior Standing Counsel

ORDER

The Petitioner is before this Court against the impugned Order-in-Original No.13/23 dated 13.10.2023. By the impugned order, a part of the proposals in Show Cause Notice No.01/2023(GST) dated 10.01.2023 to impose penalty under Section 11AC(1)(c) of the Central Excise Act, 1944 read with Section 122(2)(b) of the CGST Act, 2017 has been confirmed against the petitioner. Operative portion of the impugned order reads as under:-

> *"(a) I confirm the demand of Rs.12,24,184/- being the Cenvat credit availed on the written off obsolete/slow moving inputs under Section 11A(4) of the Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, 2004 and Section 74(9) of the CGST Act, 2017 and appropriating the amount of Rs.12,24,184/- paid by the tax payer on 23.10.2019 through cash vide CTIN No.1910069805 dated 23.10.2019 against the subject demand, as discussed supra in para 5;*
>
> *(b) I drop the demand of interest demanded in the impugned show cause notice under Section 11AA of the Central Excise Act, 1944, read with Section 50(3) of the CGST Act, 2017, as discussed supra in para 5;*
>
> *(c) I impose a penalty of Rs.12,24,184/- under Section 11AC(1)(c) of the Central Excise Act, 1944, read with Section 122(2)(b) of the CGST Act, 2017, against the demand confirmed in (a) above, as discussed supra in para 5."*

2. The facts on record reveals that the Petitioner had certain slow moving stocks and had thus reversed the proportionate input tax credit on

23.10.2019. The Petitioner was thus issued with a Show Cause Notice on account of the transitioning of the aforesaid credit under the new regime with effect from 01.07.2017 under the respective GST enactments (Section 140 of the CGST Act, 2017.

3. By the impugned order, the Respondent has concluded that there was no scope for levying the interest, as the Petitioner had sufficient balance of input tax credit. Same stands recorded in para 5.10 of the impugned order reads as under:-

> "*5.10. Accordingly, in view of the above facts and in light of various Courts/Tribunals judgements related to the matter of recovery of Cenvat credit, I intend to drop the demand of interest under Section 11AA of the Central Excise Act, 1944 read with Rule 14(1)(i) of the Cenvat Credit Rules, 2004 in as much as the taxpayer had maintained sufficient balance in their credit ledger till the payment of attributable Cenvat against the subject obsolete/slow moving inputs.*"

4. Thus, the only issue that arises for consideration is whether the Writ Petition is maintainable in view of the alternate remedy under Section 107 of the respective GST enactments before the appellate authority and whether the Petitioner is entitled for the relief sought for insofar as imposition of penalty under Section 11AC(1)(c) read with Section 122(2)(b) of the CGST Act,

2017. While dealing with an identical case in ***Greenstar Fertilizers Limite***d Vs. ***Joint Commissioner, GST and Central Excise (Appeal), Madurai*** reported in ***2024 (87) G.S.T.L. 455(mad)***, this Court had considered several decisions of other Courts and concluded as under:-

> "*18. Under these circumstances, I am of the view that imposition of penalty under the peculiar facts and circumstances of the case is unjustified. However, considering the fact that the petitioner has availed input tax credit, which was not eligible to be availed, but could have resulted in wrong utilization of input tax credit, a token penalty of Rs.10,000/- is imposed on the petitioner. The observation of the first respondent by placing reliance on the decisions of the Hon'ble Supreme Court referred to supra, is also not relevant as Section 74 of the CGST Act deals with a situation where the credit is availed or utilized by reason of fraud or any willful misstatement or suppression of facts.*"

5. This view has also been followed by this Court in the case of ***Fairmacs Shipstores Private Limited*** Vs. ***Deputy Commissioner (ST), Chennai*** reported in ***2025 (97) G.S.T.L. 33(Mad)*** and the case is remitted back to the Respondent(s).

6. A reading of the above decision in the context of the case indicates that although the Petitioner had delayed in reversing the proportionate input tax credit availed on the obsolete/slow moving inputs, the Petitioner did not

get any advantage for the same and had reversed the proportionate credit based in their entries made in the trial balance on 23.10.2019.

7. Therefore, I am of the view, there is no justification in imposing penalty under Section 11AC(1)(c) of the Central Excise Act, 1944 read with Section 122(2)(b) of the CGST Act, 2017.

8. This Writ Petition stands allowed with the above observations. No costs. Connected Writ Miscellaneous Petition is closed.

08.10.2025

Neutral Citation : Yes / No

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To:

The Deputy Commissioner of GST & Central Excise,
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C.SARAVANAN, J.

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