

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-07-2021

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THE HONOURABLE MR. JUSTICE S. M. SUBRAMANIAM

WP Nos.15306 and 15307 of 2021

And

WMP No.16193 of 2021

S R & Sons,
(Represented by its Partner, Mr.R.Rajkumar),
No.89/2, Padmavathipuram,
Avinashi Road,
Tirupur – 641 603. .. Petitioner in both WPs

vs.

1. Assistant Commissioner (ST) (FAC),
North II Assessment Circle,
Tirupur.

2. Central Board Indirect Taxes & Customs,
Government of India,
Ministry of Finance,
Department of Revenue,
New Delhi. .. Respondents in both WPs

WP No.15306 of 2021 is filed under Article 226 of the

Constitution of India, praying for the issuance of a Writ of Certiorari, calling

1/8

for the records on the files of the first respondent herein in GSTN 33ABEFS9057L1ZP in Refund Application ARN: AA330920053690F dated 03.02.2021 and quash the same.

WP No.15307 of 2021 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records on the files of the second respondent herein in Circular No.94/13/2019-GST dated 28.03.2019, quash paragraph-3(a) of the said circular in so far as it provides for levy of interest under Section 50(1) of the CGST Act, 2017.

For Petitioner in both WPs : Mr.N.Prasad

For Respondent-1 in both WPs: Mr.T.N.C.Kaushik, Government Advocate (Taxes).

COMMON ORDER

The lis on hand is filed questioning the validity of the order passed by the first respondent-Assistant Commissioner in proceedings dated 03.02.2021.

2. The petitioner is a Partnership Firm. The petitioner has its factory at Karumathampatti, Coimbatore District. The petitioner has involved in the activity of manufacture of knitted and crocheted fabrics. The petitioner has a

registration under the Central Goods and Services Tax Act, 2017 and an assessee under the GST regime with the first respondent-Assistant Commissioner.

3. Learned counsel for the petitioner made a submission that under Section 50 of the Central Goods and Services Tax Act, 2017, interest on delayed payment of tax shall be charged. However, the petitioner has raised certain valid grounds, as the first respondent failed to adjudicate the factual as well as the legal grounds raised. The circular referred in the impugned order dated 28.03.2019 is not in dispute. However, the applicability or otherwise has to be considered.

4. Perusal of the order impugned would reveal that the first respondent-Assistant Commissioner has not decided any issues on merits, as the impugned order states that “if the reversal made after the due date of date mentioned in said notification, the following instruction issued to proper officer as per circular No.94/13/2019 GST dated 28.03.2019, the registered person who has reversed the amount of credit to be lapsed in the return in FORM GSTR-3B for any month subsequent to August 2018 or through FORM GST

DRC-03 subsequent to the due date of filing of the return in FORM GSTR-3B for the month of August, 2018 would remain eligible to claim refund of unutilized ITC on account of accumulation due to inverted tax structure w.e.f. 01.08.2018. However, such refund shall be granted only after the reversal of the amount of credit to be lapsed, either through FORM GSTR-3B or FORMGST DRC-03, along with payment of interest, as applicable”.

5. The concluding paragraph reads that “during the processing of refund application, there is no need to pass separate speaking order and refund sanction order in RFD 06 is also passed on 11.11.2020 which was automatically sent to your mail. If you want to file any appeal, you have full liberty to file against my RFD 08 (SCN) and RFD 06 against any Forum”.

6. Thus, the first respondent had not undertaken any adjudication with reference to the disputed issues. The first respondent has granted liberty to the petitioner to prefer an appeal against the order in original passed on 11.11.2020.

7. The learned counsel for the petitioner reiterated that the petitioner

has no serious grievance against the said order in original dated 11.11.2020. As far as the interest portion is concerned, the petitioner is having certain grievances and to redress the said grievances, he approached the authorities by way of a representation dated 03.11.2020 and the said representation is to be disposed of by the Authority Competent, as the authority is bound to decide the same on merits with reference to Section 73(9) of the Central Goods and Services Tax Act, 2017 read with Rule 142(5) of the Central Goods and Services Tax Rules, 2017.

8. When the Authorities Competent are empowered to decide the interest, which is in dispute, with reference to the provisions stated above and in the event of passing any order on merits, the aggrieved person would get an opportunity to further appeal under the provisions of the Act. Such an exercise has not been done by the Authority Competent and therefore, the petitioner is constrained to move the present writ petitions.

9. The learned Government Advocate appearing on behalf of the first respondent disputed the said contention of the learned counsel appearing on behalf of the petitioner by stating that the order in original passed on

11.11.2020 is an appealable order and the impugned order also grants liberty to the petitioner to prefer an appeal in the manner known to law. Thus, the writ petitions are to be rejected.

10. This Court is of the considered opinion that the petitioner has emphatically stated that he has no grievance against the order in original dated 11.11.2020 and his grievance is against the charging of interest under Section 50 of the Central Goods and Services Tax Act, 2017 and in respect of the said grievance, the petitioner submitted a representation to the first respondent on 03.11.2020, which is yet to be disposed of and such representation is entertainable under the provisions of the Act and the Authorities Competent is duty bound to dispose of the same on merits and in accordance with law.

11. In view of of the submission of the abovesaid representation, the first respondent is directed to consider the representation submitted by the petitioner on 03.11.2020 and pass an order on merits and in accordance with law and by affording an opportunity to the writ petitioner, as expeditiously as possible, preferably within a period of twelve weeks from the date of receipt of a copy of this order. The writ petitioner is directed to cooperate with the first

respondent for the early disposal of the application by submitting all relevant documents and evidences or the rulings relied upon. It is made clear that in respect of the circular issued by the Board, if any grievance exists, the petitioner is at liberty to move the appropriate Court of Law after adjudication and passing an order by the Competent Authority.

12. With the above directions, the writ petitions stand disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

26-07-2021

Index : Yes/No.

Internet : Yes/No.

Speaking Order/Non-Speaking Order.

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To

1. Assistant Commissioner (ST) (FAC),
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Tirupur.

2. Central Board Indirect Taxes & Customs,
Government of India,
Ministry of Finance,
Department of Revenue,
New Delhi.

7/8

S.M.SUBRAMANIAM, J.

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