

W.P.No.13104 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 23.04.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.13104 of 2023

and

W.M.P.No.12870 of 2023

Tvl.Cargotec India Private Limited,
Represented by its Authorised Signatory
Jagabandhu Ganguly

... Petitioner

Vs.

- 1.The Assistant Commissioner (ST),
Manali Assessment Circle,
Wall Tax Road, Chennai – 600 003.
- 2.The Assistant Commissioner (ST),
Harbour Assessment Circle,
Integrated Building for Commercial Taxes Department,
No.32, Elephant Gate Bridge Road,
Vepery, Chennai – 600 003.
- 3.The Appellate Deputy Commissioner (ST),
No.1, PAPJM Annexure Building,
Greems Road, Chennai – 600 006.
- 4.The Deputy Commissioner (ST), Zone-III,
1st Floor, Room No.102,
No.32, Integrated Commercial Taxes Complex,
Wall Tax Road,
Vepery, Chennai – 600 003.



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5. The Assistant Commissioner (CT),
Madhavaram Assessment Circle,
No.32, Integrated Commercial Taxes Complex,
Wall Tax Road,
Vepey, Chennai – 600 003.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the first respondent to recredit or refund the amount of Rs.3,76,35,138/- and Rs.28,27,654/- to the GST Electronic Credit Ledger and Rs.19,297/- and Rs.93,83,396/- to the GST Electronic Cash Ledger of the petitioner.

For Petitioner : Ms.R.Charulatha
for M/s.Lakshmi Kumaran & Sridharan Attorneys

For Respondents : Mr.V.Prashanth Kiran
Government Advocate

ORDER

By this Writ Petition, the petitioner seeks a direction for recredit or refund of the amounts recovered pursuant to assessment orders pertaining to assessment years 2017-2018, 2018-2019 and 2019-2020.

2. Learned counsel for the petitioner submits that the assessment orders were issued on 28.12.2022. By relying on Section 78 of applicable



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by the GST enactments, she contends that no recovery measures shall be undertaken by the GST authorities for a period of three months from the date of such order since a three month limitation period is prescribed for filing an appeal before the first appellate authority. She points out that appeals were lodged on 06.04.2023. However, she submits that recovery proceedings were initiated even prior to the expiry of the three month period and that amounts were debited from the petitioner's Electronic Cash and Credit Ledgers in February 2023. She submits that this Writ Petition was filed in the said facts and circumstances.

3. Mr.V.Prashanth Kiran, learned Government Advocate, appears on behalf of the respondents. He placed reliance on the counter affidavit, particularly paragraphs 6 and 10 thereof. On such basis, he contends that the action of the respondents in initiating recovery measures is justified.

4. Section 78 of the Tamil Nadu Goods and Services Tax Act, 2017 is as under:-

“78. Initiation of recovery proceedings.-

Any amount payable by a taxable person in pursuance of



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an order passed under this Act shall be paid by such person within a period of three months from the date of service of such order failing which recovery proceedings shall be initiated.

Provided that where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him.”

5. The proviso to Section 78 of the Tamil Nadu Goods and Service Tax Act, 2017, may be invoked only if the proper officer records in writing the reason as to why he considers it expedient in the interest of the revenue to require the taxable person to make payment even before the expiry of the prescribed three month period. In the case in hand, no material has been placed on record to justify invoking the proviso to Section 78 of the applicable GST enactments.

6. In the counter affidavit, the respondents have stated as under in paragraphs 10 and 33 thereof:



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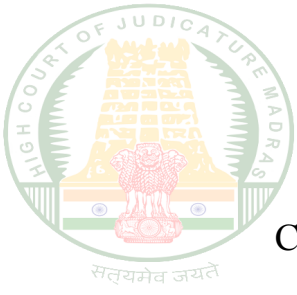
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“10. It is submitted that the fourth respondent had recovered the amount both from the Electronic Credit Ledger and Electronic Cash Ledger even before the expiry of the 90 days under proviso to Section 78 of the CGST Act/TNGST Act, 2017 and it is extracted below.

“provided that where the proper officer consider it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payments within such period less than a period of three months as may be specified by him.”

It is only against this early recovery of the taxes from the GST Electronic Credit Ledger and Electronic Cash Ledger of the taxable person, the petitioner had approached the Honourable Court, for necessary relief.

33. With regard to the averments made in Para 50 of the affidavit, it is submitted that the First Respondent is ready to issue the refund of recovered amount by way of re-credit to



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Credit Ledger and Cash Ledger respectively if the petitioner

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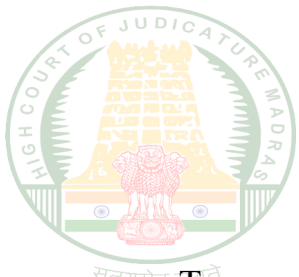
7. In view of the fact that the respondents have failed to satisfactorily explain the recourse to the proviso to Section 78, the petitioner is entitled to a refund.

8. Consequently, W.P.No.13104 of 2023 is allowed by directing the first respondent to either refund the recovered amount or recredit the same to the petitioner's Electronic Cash or Credit Ledgers, as the case may be, within one month from the date of receipt of a copy of this order. No costs. Connected Writ Miscellaneous Petition is closed.

23.04.2024

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

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सत्यमेव जयते
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