

W.P.(MD) No.17617 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.17617 of 2024

Tvl.Amaxing ADDS,
Represented by its Proprietor P.Marimuthu.

... Petitioner

Vs.

1.The State Tax Officer,
Thanjavur-II Assessment Circle,
Commercial Taxes Building, 20/1,
Sachidananda Moopanar Road,
Thanjavur – 613 001.

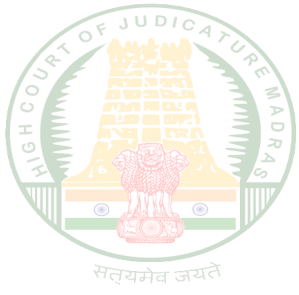
2.The Deputy Commissioner (ST),
20/3, Sachindananda Moopanar Road,
Thanjavur – 613 001.

3.The Appellate Deputy Commissioner (ST)(GST),
Trichy.

... Respondents

(R3 is *suo motu* impleaded vide order dated 29.07.2024
in W.P.(MD)No.17617 of 2024)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus to direct the second respondent themselves, their officers, subordinates, servants and agents to forthwith sanction, grant and pay to



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the petitioner an amount of Rs.4,70,207/-.

For petitioner : Mr.G.V.Monika Sri
For respondents : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

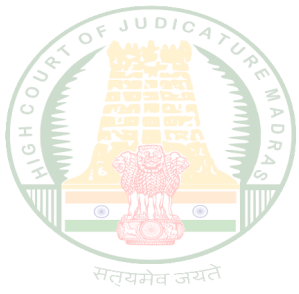
Heard learned counsel for the petitioner and learned Additional Government Pleader for the respondents.

2. The petitioner has filed this Writ Petition for a Mandamus to direct the second respondent to refund a sum of Rs.4,70,207/- towards interest and penalty confirmed vide order dated 16.03.2024.

3. By the aforesaid order, the total of Rs.7,31,881/- was confirmed towards tax, interest and penalty as detailed below:

Tax Rs.	Interest Rs.	Penalty Rs.	Fee Rs.	Others Rs.	Total Rs.
2,61,674	2,33,571	2,36,636	0	0	7,31,881

4. The aforesaid order was passed under Section 73 of the respective GST



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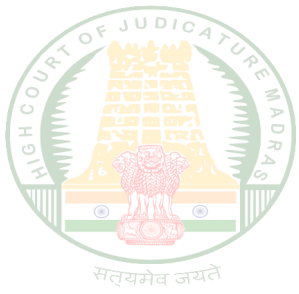
enactments by the first respondent.

5. Aggrieved by the same, the petitioner has filed an appeal before the Appellate Deputy Commissioner (ST)(GST), Trichy on 26.06.2024. The aforesaid appeal has been filed with the delay of 10 days within condonable period of delay in terms of Section 107 of the respective GST enactments.

6. It is submitted that the second respondent has however, proceeded to recover a sum of Rs.7,31,881/- from and out of the petitioner's Bank Account, although the petitioner is required to deposit only 10% of the disputed tax, which has been already deposited by debiting Electronic Credit Ledger along with the appeal that was presented on 26.06.2024.

7. It is submitted that the second respondent was not justified in recovering the entire amount from and out of the petitioner's Bank Account maintained in Bank of Baroda, VOC Nagar, Thanjur.

8. The learned counsel for the petitioner has also drawn attention to the



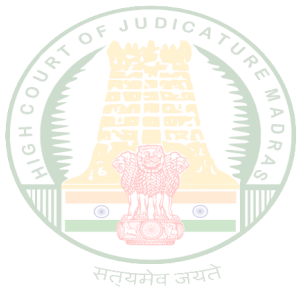
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proposal contained in clause 142 to Finance (No.2) Bill, 2024, which proposes to insert Section 128A in the CGST Act.

9. The learned Additional Government Pleader for the respondents submits that this Writ Petition is devoid of any merits. It is submitted that the recovery was made on 27.06.2024 after the expiry of limitation for filing an appeal expired as the delay of 10 days has not been condoned.

10. By way of rejoinder, the learned counsel for the petitioner submits that the petitioner is a proprietary concern and the petitioner's proprietor namely, P.Marimuthu, was ailing, and has produced a copy of the medical certificate for condonation of delay of 10 days in filing the appeal against the aforesaid order.

11. Having considered the arguments advanced by the learned counsel for the petitioner and learned Additional Government Pleader for the respondents, *prima facie* indicates that the petitioner is admitting to the tax liability, but has however, questioned the imposition of penalty and interest under Section 73 of the TNGST Act, 2017.



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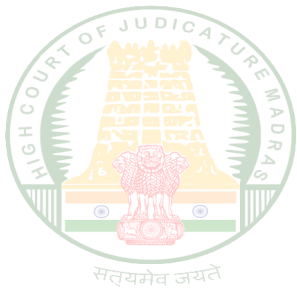
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12. It appears that there is also a proposal to certain relief in the Budget, that was presented on 22.06.2024, when the Finance (No.2) Bill, 2024 was also presented before the Parliament to insert Section 128A in CGST Act, 2017. Similar amendments are also expected to be made pursuant to the recommendation of the GST Council in its Meeting. The reason for insertion of the proposed Section 128A to CGST Act, 2017 reads as follows:

B. Measures for facilitation of trade:

1. Insertion of Section 128A in CGST Act, to provide for conditional waiver of interest or penalty or both, relating to demands raised under Section 73, for FY 2017-18 to FY 2019-20 : Considering the difficulties faced by the taxpayers, during the initial years of implementation of GST, the GST Council recommended, waiving interest and penalties for demand notices issued under Section 73 of the CGST Act for the fiscal years 2017-18, 2018-19 and 2019-20, in cases where the taxpayer pays the full amount of tax demanded in the notice upto **31.03.2025**. The waiver does not cover demand of erroneous refunds. To implement this, the GST Council has recommended insertion of Section 128A in CGST Act, 2017.

13. The proposed Section 128A as per Clause 142 to Finance (No.2) Bill, 2024 reads as under:



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Insertion of new section 128A.

142. After section 128 of the Central Goods and Services Tax Act, the following section shall be inserted, namely:—

Waiver of interest or penalty or both relating to demands raised under section 73, for certain tax periods.

“128A. (1) Notwithstanding anything to the contrary contained in this Act, where any amount of tax is payable by a person chargeable with tax in accordance with,—

(a) a notice issued under sub-section (1) of section 73 or a statement issued under sub-section (3) of section 73, and where no order under sub-section (9) of section 73 has been issued; or

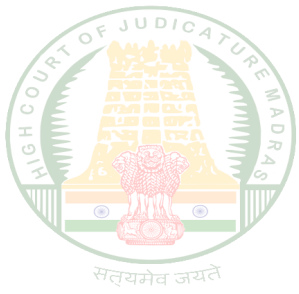
(b) an order passed under sub-section (9) of section 73, and where no order under sub-section (11) of section 107 or sub-section (1) of section 108 has been passed; or

(c) an order passed under sub-section (11) of section 107 or sub-section (1) of section 108, and where no order under sub-section (1) of section 113 has been passed,

pertaining to the period from 1st July, 2017 to 31st March, 2020, or a part thereof, and the said person pays the full amount of tax payable as per the notice or statement or the order referred to in clause (a), clause (b) or clause (c), as the case may be, on or before the date, as may be notified by the Government on the recommendations of the Council, no interest under section 50 and penalty under this Act, shall be payable and all the proceedings in respect of the said notice or order or statement, as the case may be, shall be deemed to be concluded, subject to such conditions as may be prescribed:

14. Considering the same, the Court is inclined to direct the respondents 1 and 2 to refund the amount recovered from the petitioner's Bank Account on 27.06.2024 as prayed for as an appeal has been filed by the petitioner on 26.06.2024 before the Appellate Deputy Commissioner (ST)(GST), Trichy, within condonable period of limitation under Section 107 of the TNGST Act, 2017.

15. The Appellate Deputy Commissioner (ST)(GST), Trichy is *suo motu*



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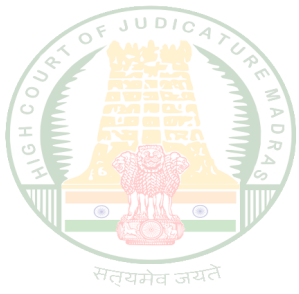
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added as the third respondent, before whom, the petitioner has filed an appeal on **26.06.2024**.

16. The third respondent, the Appellate Deputy Commissioner (ST)(GST), Trichy, is therefore directed to number the appeal and pass an order within a period of 15 days from the date of receipt of a copy of this order in the application filed by the petitioner for condoning the delay of ten days. In case the petitioner has made out sufficient cause for condoning the delay, the delay may be condoned.

17. In case, the delay is condoned by the third respondent/the Appellate Deputy Commissioner (ST)(GST), Trichy, the respondents 1 and 2 shall refund the amount of Rs.4,70,207/- to the petitioner forthwith, thereafter.

18. Even if the delay is not condoned, the petitioner's right to seek for refund stands preserved subject to the Finance Act, 2024 being passed by accepting the proposal in Clause 142 to Finance (No.2) Bill, 2024. It is, however, made clear, no opinion is expressed as to whether, the proposals in Clause 142 of



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Finance (No.2) Bill, 2024, even if it is/are accepted and the Finance Act, 2024 is/are passed both by the Union Parliament and State Legislative, the petitioner will be entitled to abatement. It has to be decided independently.

This Writ Petition is disposed of with above directions. No costs.

Index : Yes / No
Internet : Yes / No
apd

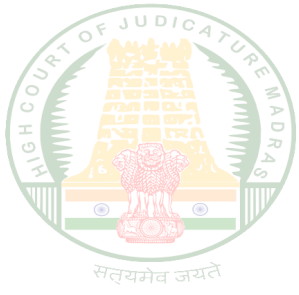
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C.SARAVANAN, J.

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