



W.P.No.9231 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 05.04.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.9231 of 2024
and W.M.P.No.10269 of 2024

M/s.Eicher Motors Limited
(Unit: Royal Enfield)
Thiruvottiyur High Road
Thiruvottiyur, Chennai 600 019
Represented by its Authorised Signatory
Mr.R.Hari Prasad

... Petitioner

-vs-

- 1.The Assistant Commissioner of Central Tax and Central Excise,
Thiruvottiyur Division, Chennai - North Commissionerate,
No.459 (Old No.317), Anna Salai,
Teynampet, Chennai 600 018.
- 2.The Commissioner of GST and CCE (Chennai North)
No.26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 002.
- 3.The Deputy Commissioner of Central Tax and Central Excise,
Thiruvottiyur Division, Chennai - North Commissionerate,
No.459 (Old No.317), Anna Salai,
Teynampet, Chennai 600 018.

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4. Superintendent (Thiruvottiyur Division)

Thiruvottiyur Division, Chennai - North Commissionerate,
No.459 (Old No.317), Anna Salai,
Teynampet, Chennai 600 018.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records relating to the impugned show cause notice No.4/2023-24(R) (DIN: 20231259TK0000000FAD) dated 15.12.2023 issued by the first respondent and quash the same.

For Petitioner : Mr.Vijay Narayan, Sr. Adv.
for M/s.Lakshmi Kumaran and Sridharan

For Respondents : Mr.Rajnish Pathiyil, Sr. SC

ORDER

A show cause notice dated 15.12.2023 is challenged in this writ

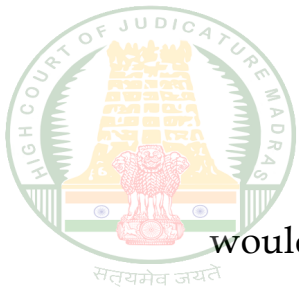


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petition. Proceedings were initiated under the Central Excise Act, 1944 against the petitioner. In relation thereto, an order in original dated 22.06.2009 was issued. Such order was carried in appeal and eventually the Customs Central Excise and Service Tax Appellate Tribunal (the CESTAT) disposed of the matter by order dated 07.03.2023. In terms of such order, the respondents succeeded to the extent of a claim of Rs.49,00,000/- with interest thereon. The petitioner has filed a civil miscellaneous appeal against such order before this Court insofar as it relates to the liability to pay interest on the sum of Rs.49,00,000/-, but the appeal is yet to be numbered on account of the pending application for condonation of delay. The present writ petition was filed in these facts and circumstances.

2. Learned senior counsel for the petitioner referred to Section 11AB of the Central Excise Act and pointed out that such provision came into effect on 11.05.2001. He further submitted that sub-section (2) thereof makes it abundantly clear that sub-section (1) thereof

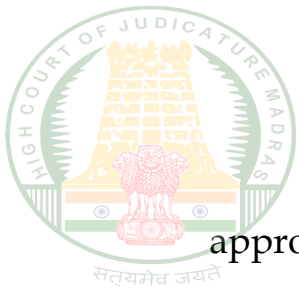


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would not apply to cases where duty became payable or ought to have been paid before the date on which sub-section (1) came into force. By virtue of sub-section (2), learned senior counsel submits that sub-section (1) is inapplicable to the claim for interest by the respondents. On account of the order of the CESTAT, learned senior counsel contends that the first respondent would merely follow the order of CESTAT and that the petitioner would have no meaningful opportunity to show cause.

3. Mr.Rajnish Pathiyil, learned senior standing counsel, accepts notice for the respondents. By referring to paragraph 17 of the order of CESTAT, he submits that the said order holds the field as on date and would be binding on all the parties.

4. Since an appeal has been filed against the order of CESTAT with regard to the imposition of interest on the sum of Rs.49,00,000/- and the said appeal is pending consideration, it is just and



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appropriate to provide protection to the petitioner until such appeal

is taken up. Therefore, W.P.No.9231 of 2024 is disposed of with the

following directions:

(i) The petitioner shall reply to the show cause notice but the first respondent is restrained from issuing any orders or from appropriating the interest liability from and out of the sum of Rs.1.28 crores lying with the respondents until the matter is taken up by the appellate court. This will not stand in the way of the respondents appropriating the principal sum of Rs.49,00,000/- from the amounts lying with them.

(ii) The petitioner is directed to take all necessary measures to number and list the appeal within *one month*.

(iii) No costs.

(iv) Consequently, W.M.P.No.10269 of 2024 is closed.

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

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To

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SENTHILKUMAR RAMAMOORTHY,J

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