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W.P.No.11709 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2024

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Writ Petition No.11709 of 2022
and W.M.P.No.11172 of 2022

Tvl. Renault Nissan Automotive India Pvt. Ltd.,
Represented by its Deputy General Manager,
Authorised Signatory,
Mr.K.Srinivasa Rao,
Plot No.1, Sipcot Industrial Park,
Orogadam Village,
Kanchipuram, Tamil Nadu-602 105.

... Petitioner

-VS-

Joint Commissioner (ST) (FAC),
Office of the Joint Commissioner (ST),
Large Taxpayers Unit,
Newly Integrated Commercial Taxes
and Registration Building,
South Tower, 4th floor Block No.19,
Room No.404, Govt. Farm Village,
Guindy Taluk, Saidapet,
Chennai-35.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records on the file of the respondent in respect to the order bearing

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Re.No.869266/3167A/2020/B5 dated 08.12.2021 and quash the same as

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illegal, arbitrary, violative of principles of natural justice and pass an order of direction forbearing the respondent from demanding/recovering any amounts pursuant to Re.No.869266/3167A/2020/B5 dated 08.12.2021.

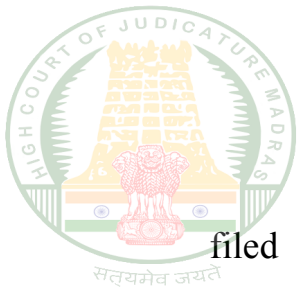
For Petitioner : Mr.S.Muthu Venkataraman

For Respondent : Mr.T.N.C.Kaushik,
Additional Government Pleader (T)

ORDER

By this writ petition, an order dated 08.12.2021 in revision proceedings under the Tamil Nadu Goods and Services Tax Act, 2017 (the TNGST Act) is assailed.

2. The petitioner is engaged in the manufacture and supply of passenger cars. The said supply is made at concessional rates in terms of Notification No.40/2017-Central Tax (Rate) dated 23.10.2017. As a consequence, there is an accumulation of Input Tax Credit (ITC) because GST is paid at a higher rate on the inputs (i.e. input goods) and input services procured by the petitioner. In those circumstances, the petitioner



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filed a refund application on 17.04.2018 seeking refund of Rs.25,81,17,728/-. Such refund claim was sanctioned on 31.05.2018 to the extent of Rs.25,75,07,243/-. Pursuant to an amendment to the Central Goods and Services Tax Rules, revision proceedings were initiated. The impugned order came to be issued in such revision proceedings.

3. Learned counsel for the petitioner assails the order issued in revision proceedings on multiple grounds. The first ground of challenge is that the refund order did not warrant revision under the facts and circumstances. By contending that the law as it stood, on the date of application, permitted a refund claim in respect of unutilised ITC arising out of both inputs and input services, learned counsel submits that the revision proceedings travel beyond the scope of Section 108 of the TNGST Act. The second contention is that the levy of interest under the impugned order was contrary to Section 50(3) of the TNGST Act. In this connection, with reference to the impugned order, learned counsel submits that the conclusions are not supported by reasons. Likewise, learned counsel submits that the imposition of penalty is erroneous in as much as the refund



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claim was made bona fide under the applicable law. Once again, it is submitted that the impugned order does not contain any reasons in support of the levy of penalty.

4. In response to these contentions, Mr.T.N.C.Kaushik, learned Additional Government Pleader, submitted that the scope of Section 108 of the TNGST Act is wide enough to embrace revision proceedings in the facts and circumstances of this case. As a result of the amended Rule 89(5) and the subsequent upholding of such amendment by a Division Bench of this Court and the Hon'ble Supreme Court, learned Additional Government Pleader submits that no interference is warranted with the impugned revision order.

5. As submitted by learned Additional Government Pleader, the amended Rule 89(5), including its retrospective operation, was upheld by the Division Bench of this Court in a batch of cases, where the lead case was W.P.No.8596 of 2019. Such order was affirmed by the Hon'ble Supreme Court in C.A.No.4810 of 2021.



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6. Nonetheless, the petitioner has assailed the order on the ground that it travels beyond the scope of revision proceedings under Section 108 of the TNGST Act. No findings were recorded with regard to this objection in the impugned order. The petitioner also contended that interest was not leviable under Section 50(3) of the TNGST Act and that penalty should not be levied in the facts and circumstances. While these contentions were noticed in the impugned order, the respondent did not engage with these contentions and record reasons for not accepting the same. For such reason, the order impugned herein warrants interference.

7. Therefore, the impugned order is quashed and the matter is remanded for reconsideration. The respondent is directed to provide a reasonable opportunity, including a personal hearing, to the petitioner and thereafter issue a speaking order. This exercise shall be completed within a maximum period of two months from the date of receipt of a copy of this order.



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8. The writ petition is disposed of on the above terms. There will be

no order as to costs. Consequently, connected miscellaneous petition 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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