IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13..03..2023

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The Honourable **DR.JUSTICE ANITA SUMANTH**

Writ Petition No.19170 of 2020
and
W.M.P.Nos.23748 of 2020 & 13331 of 2021

M/s.Grundfos Pumps India Pvt. Ltd.,
Rep. by Mr.A.Venkataraman – Director,
No.118, Rajiv Gandhi Salai,
Thoraipakkam, Chennai 600 097.

..... Petitioner

-Versus-

The Joint Commissioner of GST & Central Excise,
Chennai South Commissionerate,
MHU Complex, 5th Floor,
No.692, Anna Salai,
Nandhanam, Chennai 600035.

.... Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the respondent in the impugned order in original No.01/2020(GST) JC dated 18.11.2020 as it has been passed contrary to the settled judicial principles by not considering any of the decision of the Supreme Court relied upon; against the law laid down by the Supreme Court in the case of CCE v. Bombay Dyeing Manufacturing Co. (2007) 215 ELT 3 and levying interest even though the credit was never utilized.

For Petitioner : *Ms.Radhika Chandra Sekhar for Mr.K.Vaitheeswaran*

For Respondent : *Mr.Rajinish Pathiyil, Senior Standing Counsel*

ORDER

The petitioner is a dealer under The Central Goods and Services Act, 2017 (CGST Act) and assessee on the file of the respondent officer. It challenges an order in original dated 18.11.2020 that has been passed contrary to the settled judicial principles and the law laid down by the Hon'ble Supreme Court in several matters including in the case of *Commissioner of Central Excise v. Bombay Dyeing Manufacturing Company*[1].

2. The petitioner had been an assessee under the erstwhile Central Excise regime as well as Finance Act, 1994 under which service tax is levied and migrated into the regime of GST on and from 01.07.2017. Tran-1 had been filed on 10.07.2017 and 11.08.2017 bringing forward the unutilized credit as transitional credit. Admittedly and the counter filed by the respondent does not dispute this position, though the credit had been transitioned, it had not found place in the Electronic Credit Ledger (ECL).

1 (2007) 215 ELT3

3. The ECL is an electronic document which reflects the credit available to a particular assessee and this document falls within the domain of the GST department. There is no explanation for why the transitioned credit did not find place in the ECL. Be that as it may and seeing as the credit was unavailable in the ECL, the petitioner reflected the same as available ITC in its retention and in Form GSTR-3B return.

4. In my view, the petitioner cannot be faulted for the same, since transition has been sought in line with the procedures set out under the Act and Rules. The flaw had been occasioned in the maintenance of the ECL by the revenue. Thus, it was quite justified for the petitioner to ensure, by all legitimate methods possible, that the credit available was presumed for utilization, as and when required. After having reflected the credit in the GSTR-3B, the petitioner realized that it had, without explanation, come to be reflected in the ECL. Thus, the credit had been reversed on 20.07.2018 without set off / utilization against out put tax liability at any point of time. These are the admitted facts.

5. In the mean while, the audit wing of the GST department upon noticing that there had been credit in the GST 3B that had been later reversed, adopted the view that the petitioner would be liable for interest at 24%, irrespective of fact that such credit had not been utilized. The

same position obtained in regard to Education Cess and Higher Education Cess as well in respect of which the facts are identical. Based on the audit objection, a show cause notice was issued on 26.07.2019 proposing to recover the interest invoking section 50(3) of the CGST Act and to deny the CENVAT credit on inputs lying in stock.

6. As far as the second limb of the disallowance relating to slow moving stock, the petitioner does not pursue the challenge in this writ petition and seeks liberty to challenge the same by way of statutory appeal. Seeing as this writ petition has been instituted on 11.12.2020 within 30 days from the date of receipt of the impugned order, there is no bar qua limitation and hence, the petitioner is permitted to challenge that portion of the impugned order within a period of 30 days from today without reference to the limitation, but subject to compliance with all other statutory conditions.

7. As regards invocation of Section 50(3) with regard to ITC, Education Cess and Higher Educational Cess, I am of the view that the impugned order is liable to be reversed. Section 50 (3) of CGST Act reads thus:

50. **Interest on delayed payment of tax**

(1) Every person who is liable to pay tax in

accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent, as may be notified by the Government on the recommendations of the Council:

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

(3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.

Prior to substitution of Section 50 vide Finance Act, 2022 with retrospective effect from 01.07.2017, sub-section 3 of Section 50 read as follows:-

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of Section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four percent, as may be notified by the Government on the recommendations of the Council.

8. With the substitution as above, the position that emerges is that liability to interest will only in a situation where there has been actual utilisation of credit by the assessee concerned. This has made amply clear by the language post substitution to the effect that where there is undue or excess claim of ITC under Section 42(10), (section 42(10) states that the input tax liability should have been utilized to reduce output tax liability), or undue or excess reduction in input tax liability under section 43(3), making it clear that it is only in situations where there is a revenue impact that interest will become chargeable.

9. By virtue of the Amendment in 2022 that has retrospective effect from 2017, it is only when ITC has been wrongly availed and utilized with a revenue impact, that interest liability is attracted. In the present case, the original error of non-maintenance of ECL is admittedly attributable to the department. Moreover, the petitioner has not utilized the credit.

10. In such circumstances, I am of the considered view that there is no liability to interest, the impugned order to the extent to which it levies interest under Section 50(3) of the CGST, on ITC, Education Cess and Higher Education Cess, is not in conformity with law and is set aside. This writ petition is allowed to the extent indicated above. No costs.

Consequently, connected Miscellaneous Petitions stand closed.

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Index : yes / no
Speaking Order
Neutral Citation : yes
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Note to the Registry: Memo dated 08.07.2022 is taken note of and the contents are found to be in order.

To
1.The Joint Commissioner of GST & Central Excise,
Chennai South Commissionerate, MHU Complex, 5th Floor,
No.692, Anna Salai, Nandhanam, Chennai 600035.

DR. ANITA SUMANTH.J.,

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