IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2015

CORAM

The Hon'ble Mr.Justice R.Mahadevan

Writ Petition No.15172 of 2004

and

W.P.M.P.18003 of 2004

M/s.Adayar Gate Hotel Ltd.,
No.132, T.T.K.Road,
Chennai - 600 018. ... Petitioner

Vs.

The Commercial Tax Officer (FAC)
Mandaveli Assessment Circle,
Chennai - 600 028. ... Respondent

Prayer:-
Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records, pertaining to the proceedings passed by the respondent in TNGST/0760031/2002-2003, dated 28.04.2004, on his file and to quash the same in the light of the law laid down by the Hon'ble Supreme Court in the case of (M/s. India Carbon Industries Vs. State of Assam) reported in 106 STC 460.

For Petitioner : Mr.P.V.Ravikumar
For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader (Tax)

O R D E R

The challenge in this Writ Petition is to the proceedings passed by the respondent in TNGST/0760031/2002-2003, dated 28.04.2004.

2. At the very outset, the learned counsel appearing for the petitioner submitted that the issue involved in this Writ Petition is wholly covered by the judgment rendered by the Hon'ble Supreme Court, in the case of (M/s. India Carbon

Industries Vs. State of Assam) reported in 106 STC 460, following which, this Court also, in the case involving similar set of facts, viz., in W.P.(MD) Nos.5111 & 5112 of 2009, dated 17.06.2014, allowed the Writ Petition No.5112 of 2009, and set aside the impugned order, insofar as it relates to the levy of interest on additional sales tax and penalty are concerned. For better appreciation, the relevant portion of the said order is extracted hereunder:-

> "Interest cannot be demanded for belated payment on additional sales tax, as there is no substantial provision in the Tamil Nadu Additional Sales Tax Act, 1970 itself, and no penalty can be levied, as there is no charging Section under TNAST Act to levy penalty for the relevant assessment year. The provisions of TNGST Act cannot be extracted or read upon for the purpose of levy of interest or penalty under the TNAST Act."

3. The learned Additional Government Pleader (Tax) for the respondent also fairly admitted that the issue involved herein is fully covered by the judgment relied upon by the learned counsel appearing for the petitioner.

4. In the light of the judgment of the Hon'ble Supreme Court in (M/s. India Carbon Industries Vs. State of Assam) and considering the fact that I had an occasion to deal with the similar issue in W.P.(MD) No.5112 of 2009, in the case of (S.Gurunathan Vs. The Deputy Commercial Tax Officer and another), wherein, following the judgment of the Hon'ble Supreme Court, (referred to supra), allowed the said Writ Petition, I am inclined to allow the present Writ Petition as well, as in the present case also, the petitioner was asked to pay penal interest for the belated payment on additional sales tax under Section 24 (3) of the Tamil Nadu General Sales Tax Act. Accordingly, the Writ Petition is allowed, the impugned order is set aside. No costs. Consequently, connected M.P is closed.

Sd/-
Assistant Registrar(Cs-VII)

/TRUE COPY/

Sub-Assistant Registrar

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To

The Commercial Tax Officer (FAC)
Mandaveli Assessment Circle,
Chennai - 600 028.

+1 CC to Special Govt.Pleader(Taxes). SR.NO. 67904

Writ Petition No.15172 of 2004

CO-GJ
JD 08/01/2016