IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2015
CORAM

The Hon'ble Mr.Justice R.Mahadevan

Writ Petition Nos.15280 to 15282 of 2004
and
W.P.M.P.Nos.18149, 18153 and 18151 of 2004

M/s.Gazzaz Leather Garments Co.,
No.53, Vepery High Road,
Periamet, Chennai - 600 003. ... Petitioner in all W.Ps.

Vs.

The Commercial Tax Officer,
Vepery Assessment Circle,
No.3, Ritherdon Avenue,
Vepery, Chennai - 600 007. ... Respondents in all W.Ps.

Prayer in W.P.No.15280 of 2004 :-

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 records of the respondent in RC.87/2003/1998-99 (TNGST) and to quash the impugned proceedings dated 29.08.2003 insofar it relates to the imposition of penalty under Section 12 (3) and interest under Section 24(3) of the Tamil Nadu General Sales Tax Act, 1959, in view of the law down by the Division Bench of this Court in 125 STC 107.

Prayer in W.P.No.15281 of 2004 :-

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 records of the respondent in RC.87/2003/1999-2000 (TNGST) and to quash the impugned proceedings dated 29.08.2003 insofar it relates to the imposition of penalty under Section 12 (3) and interest under Section 24(3) of the Tamil Nadu General Sales Tax Act, 1959, in view of the law down by the Division Bench of this Court in 125 STC 107.

Prayer in W.P.No.15282 of 2004 :-

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 records of the respondent in RC.87/2003/1999-2000 (CST) and to quash the impugned proceedings dated 29.08.2003 insofar it relates to the imposition of penalty under Section 12 (3) and interest under Section 24(3) of the Tamil Nadu General Sales Tax Act, 1959, in view of the law down by the Division Bench of this Court in 125 STC 107.

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

COMMON O R D E R

These Writ Petitions are filed, seeking for issuance of Writ of Certiorari to quash the final assessment orders, dated 29.08.2003, passed by the respondent, insofar it relates to the imposition of penalty under Section 12 (3) and interest under Section 24(3) of the Tamil Nadu General Sales Tax Act, 1959.

2. As the issue involved in these Writ Petitions and the parties herein are one and the same, these Writ Petitions are taken up together and disposed of vide this common order.

3. The facts, which lead to the filing of these Writ Petitions are as follows:

3.1. The petitioner herein is an exporter of leather garments to the foreign countries. The Union of India, in order to encourage the export of the goods to the foreign countries, came forward with an incentive by refunding the amount of the duties paid by the exporters. The amount of the duties paid, would be entered into a pass book, called as "Duty Entitlement Pass Book" (for short, 'DEPB') in which, the credit of the duty paid would be entered. Since the sale of the petitioner's goods were only export oriented, and according to the petitioner, the said DEPB were not considered as "goods" under the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as ''the TNGST Act'') the petitioner was under the impression that they were not liable to pay any tax on the sales of DEPB Licence. That apart, they have not registered themselves under the provisions of TNGST Act and CST Act.

3.2. When things were so resting, a spot inspection was conducted by the Officials of the Enforcement Wing at the petitioner's business premises, and they submitted a report, based on which, the respondent issued notices, dated 30.04.2003, proposing to assess the petitioner on the sales of DEPB Licence for the year 1998-99 under TNGST Act and for the year 1999-2000 under CST Act. Subsequently, the respondent also passed the impugned orders confirming the proposals made in the notices, dated 30.04.2003, and levied penalty under Section 12(3) and interest under Section 24 (3) of the TNGST Act. Aggrieved by the same, the petitioner is before this Court by way of the present Writ Petitions.

4. The learned counsel appearing for the petitioner has submitted that, on the very date, i.e, on 22.07.2002, when inspection was conducted by the Officers of the Enforcement Wing, the petitioner had paid the entire amount of tax, by way of three cheques, dated 22.07.2002, bearing Nos.755562, 755563 and 755564, aggregating to a sum of Rs.656162/- in favour of the Commercial Tax Officer, Vepery Assessment Circle, viz., the respondent herein, when that being so, the respondent is not justified in levying penalty under Section 12 (3) and interest under Section 24(3) of the Tamil Nadu General Sales Tax Act, 1959. In support of his contention, the learned counsel placed reliance on the judgment of the Hon'ble Division Bench of this Court in the case of (Lingam and sons Vs. State of Tamil Nadu) reported in (2010) 29 VST 20, as in the said case, it has been held, when the assessee has paid the entire amount of tax before the completion of assessment, the question of levying penalty under Section 12 (3) of the TNGST Act, does not arise. The learned counsel, therefore, submitted that the impugned orders, dated 29.08.2003, passed by the respondent are liable to be set aside.

5. The learned Additional Government Pleader (Taxes) has submitted that, had the respondent-Department not conducted any inspection, sales suppression committed by the petitioner would not have come to light and hence, the respondent is justified in passing the impugned orders.

6. Heard both sides, and perused the materials available on record, including the judgment relied upon by the learned counsel appearing for the petitioner.

7. The main contention of the petitioner is that the sale of the petitioner's goods were only export oriented, and also the petitioner was under the impression that the DEPB were not considered as "goods" under the Tamil Nadu General Sales Tax Act, 1959 and hence, the petitioner is not liable to pay any tax on the sales of DEPB Licence. Moreover, the petitioner did not register themselves under the provisions of TNGST Act and CST Act.

8. It is also seen that the respondent issued notices, dated 30.04.2003, proposing to assess the petitioner on the sales of DEPB Licence for the year 1998-99 under TNGST Act and for the year 1999-2000 under CST Act. Thereafter, the impugned orders came to be passed, confirming the proposals made in the notices, dated 30.04.2003, and levied penalty under Section 12 (3) and interest under Section 24 (3) of the TNGST Act.

9. This Court, on consideration of the materials available on record, finds that on 22.07.2002, when inspection was conducted by the Officers of the Enforcement Wing, the petitioner paid the entire amount of tax, by way of three cheques, dated 22.07.2002, bearing Nos.755562, 755563 and 755564, aggregating to a sum of Rs.656162/- in favour of the Commercial Tax Officer, Vepery Assessment Circle, viz., the respondent herein. If that be so, the levy of penalty under Section 12 (3) of the Tamil Nadu General Sales Tax Act, 1959, is not tenable, in the light of the law laid down by the Division Bench of this Court in Lingam and sons Vs. State of Tamil Nadu reported in (2010) 29 VST 20.

10. Thus, this Court is of the view that the impugned orders passed by the respondents levying penalty under Section 12(3) of the Act alone, are unsustainable, as in the case on hand also, the petitioner has paid entire amount of tax even before the respondent has passed the assessment order. At the same time, the taxes liable to be paid along with returns, have been admittedly paid belatedly. Hence, the delay caused attracts levy of interest under Section 24(3) of the TNGST Act.

11. In fine, these Writ Petitions are partly allowed, and the impugned orders are set aside in respect of the penalty alone. With regard to levy of interest under Section 24(3) of the TNGST Act, the same shall be collected for the period of delay, i.e. from the date of return till the date of delayed payment. No costs. Consequently, connected M.Ps are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sd/rsb
To
The Commercial Tax Officer,
Vepery Assessment Circle,
No.3, Ritherdon Avenue,
Vepery, Chennai - 600 007.

+1 cc to Mr.V.Sundareswaran Advocate sr.68200
+1 cc to Special Government Pleader (Taxes) High Court, sr.67905

Writ Petition Nos.15280 to 15282 of 2004
and
W.P.M.P.Nos.18149, 18153 and 18151 of 2004

aa07/03/2016