HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

<u>WRIT PETITION No.25538 of 2003</u>

<u>DATE: 10.03.2015</u>

<u>Between</u> :

M/s.Siemens Limited, Secunderabad,
Rep. By its Sr.Manager.

.....Petitioner

And

The Commercial Tax Officer, Market Street Circle,
Secunderabad Division.

.....Respondent.

For petitioner : Sri P.Srinivasa Reddy & Sri S.Dwarakanath,

Advocates.

For Respondent : Spl. G.P. for Taxes.

< Gist:

> Head Note:

? CITATIONS:

Nil

C/15

HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.25538 of 2003

ORDER : (Per Justice R. Subhash Reddy)

In this writ petition, the petitioner seeks writ of certiorari to call for the records pertaining to the orders dated 28.08.2003 passed by the Commercial Tax Officer, Market Street Circle, Secunderabad for payment of interest on the arrears of tax under the provisions of the Central Sales Tax Act, 1956 for the assessment years 1993-94, 1995-96 and 1996-97 as illegal and arbitrary and to restrain the respondent from enforcing the aforesaid demands.

2. The petitioner is a registered dealer under the Andhra Pradesh General Sales Tax Act, 1957 and the Central Sales Tax Act, 1956 and is engaged in the business of sale of electrical, electronic and X-Ray equipment and also executes works contracts. He is assessed for tax under the provisions of the Central Sales Tax Act for the years 1993-94, 1995-96 and 1996-97, and against such assessment orders, the petitioner has filed appeals before the appellate authority.

3. When the appeals filed by the petitioner were pending consideration before the Appellate Deputy Commissioner, Act 41 of 2001 titled as 'Andhra Pradesh Sales Tax (Settlement of Disputes) Act, 2001' came into force with effect from 17.07.2001 and was in force upto 31.10.2001. Act 41 of 2001 is an Act to provide for expeditious enforcement of payment of arrears of tax, additional tax, turnover tax, penalty or interest in dispute under relevant acts relating to sales tax, entertainments tax by way of settlement of such disputes and for matters connected therewith or incidental thereto. From the preamble of the Act, it is clear that the said Act is enacted to provide for expeditious enforcement of payment of arrears of tax and settlement of disputes relating to any arrears of tax, additional tax, turnover tax, penalty or interest as the case may be, under the provisions of the Andhra Pradesh General Sales Tax, 1957, A.P. Entertainments Tax Act, 1939, Central Sales Tax Act, 1956.

4. The salient features of Act 41 of 2001 are that to claim settlement under the Act, where an appeal/revision is pending before appellate or revisional authority as on 31.03.2001 and also pending as on the date of filing of the application for settlement of dispute with regard to payment of tax, penalty or interest, the dealers should be

required to pay 50% of the disputed tax, 10% of the penalty levied and 10% of the interest levied for adjudication by the competent authority.

5. In view of the pendency of appeals filed by the petitioner before the Appellate Deputy Commissioner against the assessment orders passed for the assessment years 1993-94, 1995-96 and 1996-97, the petitioner has applied for settlement by filling Form-I before the Deputy Commissioner (CT), Secunderabad, who is competent authority to settle the disputes under the Act. The tax due for these assessment years was determined at Rs.4,22,446/- for 1993-94, Rs.13,13,245/- for 1995-96 and Rs.22,87,844/- for 1996-97. The competent authority after satisfying himself with the contents in Form-I, accepted the application of petitioner for settlement and permitted the petitioner to pay 50% of the disputed tax under the above scheme, which was paid by the petitioner, and accordingly, Certificate of Settlement was also issued in Form-III. Consequent upon such issuance of Certificate of Settlement, appeals filed by the petitioner are treated as withdrawn by the Tribunal on 25.02.2002 and the appeal filed by the Appellate Deputy Commissioner is also treated as withdrawn.

6. In this case, it is to be noticed that nearly two years after settlement of dispute and after payment of 50% of the tax arrived at on the application filed by the petitioner

in Form-I, respondent has issued a summary demand notice demanding interest on settled amounts for the assessment years 1993-94, 1995-96 and 1996-97. The interest demanded and amount settled for the said assessment years read as under :

"**Assessment year**	**Interest demanded**	**Amount settled**
(a) 1993-94 (CST)	Rs. 4,31,431/-	Rs. 2,11,223/-
(b) 1995-96 (CST)	Rs. 8,87,563/-	Rs. 6,56,623/-
(c) 1996-97 (CST)	Rs.19,58,772/-	Rs.11,43,822/-"

When such summary demand notice was issued, the petitioner has filed this writ petition. After filing this writ petition, at the stage of admission, this Court granted interim orders and the said orders continued all along.

7. In this writ petition, it is the case of the petitioner that once the tax amount itself is settled for the assessment years 1993-94, 1995-96 and 1996-97, and the petitioner has paid the determined tax and he was issued Certificate of Settlement in Form-III, it is not open for the respondent to collect any interest, which is not contemplated under Act 41 of 2001.

8. Counter affidavit is filed on behalf of respondent. In the counter, while referring to various factual aspects with regard to the application filed by the petitioner in Form-I for

settlement of dispute and further orders passed by the competent authority and admitting payment of 50% of tax as determined by the competent authority, it is stated that the Audit Party of the Accountant General, A.P., Hyderabad, during the course of audit, verified the office records and found that the interest on the amount settled under the scheme is leviable, since, while formulating Act 41 of 2001, no clear-cut provision was made with regard to levy of interest on the amounts payable by the dealers. It is stated that as levy of interest is automatic for delayed payments, it is outside the scheme of Act 41 of 2001, therefore, normal provisions of APGST Act will apply in the matter of levy of interest on the amounts settled in the scheme. It is further stated that as the levy of interest is automatic and being undisputed one, interest is calculated from the date of tax due from the petitioner i.e. from the date of filing of returns and such demand notice is in conformity with law.

9. From a perusal of various provisions under Act 41 of 2001, it is clear that it is intended for expeditious enforcement of recovery of arrears of tax, additional tax, turnover tax, penalty or interest in dispute under relevant Acts relating to Sales Tax, Entertainments Tax etc. Under Section 6 of Act 41 of 2001, 50% waiver of all the disputed taxes due as on 31.03.2001 is provided and with regard to interest and penalties, 90% waiver of such amounts is provided which were due as on 31.03.2001. Section 12 of

Act 41 of 2001 reads as under :

> "12. (1) The competent authority on being satisfied about the payment of the amount which the applicant is required to pay by virtue of the order passed under section 11 shall settle the dispute in respect of which an application has been made and issue a certificate of settlement for such dispute in such form as may be prescribed, to the applicant ordinarily within fifteen days of the receipt of the proof of payment, and thereupon such applicant shall be discharged from his liability to make payment of the balance amount of such arrears of tax, penalty or interest in dispute.
>
> Provided that a certificate of settlement shall be issued by the competent authority separately in respect of every application.
>
> (2) The competent authority, for reasons to be recorded in writing, may refuse to settle a dispute where it appears to him that the applicant has concealed any material evidence or suppressed any information or particulars by furnishing untrue or false or incorrect or incomplete information.
>
> Provided that no order adversely affecting the applicant shall be passed without giving the applicant a reasonable opportunity of showing cause against such refusal."

10. In this case, it is not in dispute that in terms of Act 41 of 2001, the claims of petitioner for the assessment years 1993-94, 1995-96 and 1996-97 were settled and

petitioner/dealer was also issued Settlement Certificate under Form-III. It is true that under the scheme of Central Sales Tax Act and Rules made thereunder, it is always open to the authorities to charge interest on the tax due from the dealers, from the date of filing of their returns. The scheme provides for settlement of disputes not only with regard to taxes due but also with regard to interest and penalty. From a perusal of the provisions under Section 6 of Act 41 of 2001, it is clear that so far as the Tax is concerned, waiver of 50% is provided and with regard to interest and penalties, 90% waiver is permissible over the amounts due as on 31.03.2001. During the relevant time, there were no orders passed by the authorities for charging interest payable by the petitioner. Even if any such orders were passed, it was also open to the petitioner to seek waiver in terms of beneficial clause under Section 6(ii) of Act 41 of 2001. From the Settlement Certificate issued in Form-III also, it is clear that the dispute with regard to payment of tax is settled, and further, in terms of the provision under Section 12 of the Act, once such certificate is issued, such applicant shall be discharged from his liability to make payment of balance amount of such arrears of tax, penalty or interest in dispute. In the absence of any notices or orders levying penalty or interest prior to settlement of dispute on the claim made by the petitioner, once the arrears of tax itself are settled, it is not open to the respondent to pass any further orders for collection of interest on the amount which is already paid. Once Certificate of Settlement is issued under the scheme of the Act, it discharges the liability of petitioner not only for payment of balance amount of tax but also for payment of penalty and interest. Having settled the dispute under the Act, it is not open for the respondents to pass subsequent orders or issue demand notices for payment of interest. Further, it is to be noticed that as against the very assessment orders, matters were carried in appeal by the petitioner and but for the settlement scheme notified under Act 41 of 2001, petitioner would not have applied for settlement of dispute without pursuing the appeals before the appellate forum. The Certificate of Settlement issued under Section 12 of the Act is final and conclusive and once such certificate is issued in Form-III, the dealer/applicant shall be discharged from his liability of paying balance amount of arrears of tax, penalty or interest, if any. Even against the orders levying penalty and interest, there is a provision in the Act itself for settlement by payment of 10% of the tax and interest, but for the fact that as there were no demand notices or orders for payment of interest and penalty, there was no occasion for the petitioner to apply for settling the same. Even against the persons from whom there were dues towards interest and penalty, 90% of such dues is waived. In the absence of any claim against the petitioner, respondent cannot be allowed to charge interest on the amount already settled under the scheme. Further, when the claim of the petitioner is considered as per the scheme notified under Act 41 of 2001, in the absence of any specific provision for collection of interest on the amount settled, it is not open for the respondent to collect the same from the petitioner.

11. For the aforesaid reasons, this writ petition is allowed and the impugned demand notices dated 28.08.2003, issued by the respondent for the assessment years 1993-94, 1995-96 and 1996-97 are hereby quashed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

R. SUBHASH REDDY, J

DR. B. SIVA SANKARA RAO, J

10th March 2015

N.B:
L.R.Copy be marked.
(b/o)
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