THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.20308 of 2016

JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

Heard Sri S. Dwarakanath, Learned Counsel for the petitioner and Sri M. Govind Reddy, Learned Special Standing Counsel for Commercial Taxes and, with their consent, the Writ Petition is disposed of at the stage of admission. The order of the 1st respondent dated 12.05.2016, whereby the petitioner was called upon to pay Rs.4,05,287.50ps as penal interest within seven days from the date of receipt of the order, is questioned in this Writ Petition as being arbitrary and illegal.

Facts, to the limited extent necessary, are that the petitioner (a partnership firm) carries on business in fertilisers and pesticides, and is a dealer registered under the provisions of Telangana VAT Act, 2005. They filed their monthly return for the month of June and July, 2014 after adjusting the input tax credit available for these months, and thereafter the net amount paid was Rs.13,82,239/- and Rs.15,78,138/- respectively. The petitioner carried forward input tax credit, as on 01.06.2014, for Rs.30,44,522/-, and, after adjusting the tax liability for June and July, 2014, they had further credit of Rs.83,255/-. While matters stood thus, the department made the petitioner's input tax credit, as on 01.06.2014, as zero. The petitioner addressed letter dated 21.07.2014 to the 1st respondent, along with their return for June, 2014, pointing out this error. The 1st respondent thereafter issued a Final Intimation Form (Net 28 NCCF) wherein the amount available to the petitioner as input tax credit was corrected and shown as Rs.30,44,522/- and, after adjusting the tax payable by them for June and July, 2014 for Rs.29,61,267/-, the net input tax credit, still available to the petitioner, was shown to be Rs.83,255/-.

On the ground that the error committed earlier was rectified only on 01.07.2015, a notice was issued to the petitioner on 02.03.2016 calling upon them to pay interest for the belated payment of tax from 21.07.2014 and 21.08.2014 till 01.07.2015. The petitioner submitted their reply contending that the error in treating the input tax credit, available as on 01.06.2014, as zero was that of the department and as the petitioner had sufficient input tax credit, which was more than the tax liable to be paid by them for the months of June and July, 2014, the respondents were not entitled to levy interest. Curiously the respondents, by the impugned proceedings dated 12.05.2016, proceeded to levy interest of Rs.4,05,287.50 for belated payment of tax.

It is evident from the endorsement (Final Intimation Form) that, after adjusting the tax payable for the month of June and July 2014 of Rs.29,61,267/-, the petitioner still had a net input tax credit available in their favour for Rs.83,255/-. As the input tax credit available to the petitioner was in excess of their tax liability for the months of June and July, 2014, they cannot be held to have paid tax for these two months belatedly, merely because the respondents had belatedly corrected their earlier error, in treating the input tax credit available to the petitioner as zero as on 01.06.2014, only on 01.07.2015. The impugned order levying penal interest on the petitioner, for belated payment of tax, is *ex facie* illegal and is, accordingly, set aside.

The Writ Petition is allowed. However, in the circumstances, without costs. The miscellaneous petitions pending, if any, shall also stand closed.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 28.06.2016

MRKR