IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.23956 to 23958 of 2017
&
W.M.P.Nos.25233 to 25238 of 2017

Sri Krishna Smelters Ltd.,
Rep. by its Managing Director,
R.Duraisamy,
S.F.No.110/1E, Iveli Village,
Sankari-637 301. ... Petitioner in all W.Ps.

Vs.

1. The Joint Commissioner (CT),
   Commercial Taxes Building,
   Salem Division, Salem.

2. The Assistant Commissioner (CT),
   Sankari Assessment Circle,
   Sankari, Salem District. ... Respondents in all W.Ps.

Prayer in W.P.No.23956 of 2017 : Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, calling for the records on the files of the first respondent in Spl.Reg.Sl.No.199/2011/A11 CST (2002-03) dated 31.03.2017 and quash the same as being contrary to the principles of natural justice and further direct the first respondent to proceed further for order afresh in accordance with the principle laid down by the Hon'ble Division Bench of this Court in the judgment rendered in W.A.No.1482 of 2006 and W.P.No.41326 of 2006 dated 06.12.2006 (Amutha Mills (Pvt) Ltd., Vs. Commercial Tax Officer).

Prayer in W.P.No.23957 of 2017 : Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, calling for the records on the files of the first respondent in Spl.Reg.Sl.No.199/2011/A11 TNGST (2001-02) dated 31.03.2017 and quash the same as being contrary to the principles of natural justice and further direct the first respondent to proceed further for order afresh in accordance with the principle laid down by the Hon'ble Division Bench of this Court in the judgment rendered in W.A.No.1482 of 2006 and

W.P.No.41326 of 2006 dated 06.12.2006 (Amutha Mills (Pvt) Ltd., Vs. Commercial Tax Officer).

Prayer in W.P.No.23958 of 2017 : Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, calling for the records on the files of the first respondent in Spl.Reg.Sl.No.199/2011/A11 TNGST (2002-03) dated 31.03.2017 and quash the same as being contrary to the principles of natural justice and further direct the first respondent to proceed further for order afresh in accordance with the principle laid down by the Hon'ble Division Bench of this Court in the judgment rendered in W.A.No.1482 of 2006 and W.P.No.41326 of 2006 dated 06.12.2006 (Amutha Mills (Pvt) Ltd., Vs. Commercial Tax Officer).

For Petitioner : Mr.R.Senniappan

For Respondents : Mr.K.Venkatesh, Government Advocate

C O M M O N O R D E R

Heard Mr.R.Senniappan, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondents. With the consent on either side, these writ petitions are taken up for final disposal.

2.The petitioner, a registered dealer on the file of the second respondent under the provisions of the Central Sales Tax Act, 1956 (in short “CST Act”) and the Tamil Nadu General Sales Tax Act, 1959 (in short “TNGST Act”) is before this Court challenging the notices issued by the first respondent dated 31.03.2017, directing the petitioner to pay penal interest for having defaulted in payment of deferral amount granted under the Interest Free Sales Tax Loan (in short “IFST”) deferral agreement.

3.The only question, which falls for consideration in these writ petitions is whether the first respondent was justified in demanding interest from the due date for re-payment of the loan or the petitioner is liable to pay interest only from the date of the returns. The petitioner’s case rests upon the judgment of the Hon’ble Division Bench of this Court in the case of Amutha Mills Private Limited vs. Assistant Commissioner (CT), Coimbatore and two others in Writ Appeal No.1482 of 2006 dated 06.12.2006.

4.The petitioner’s case is that the first respondent has wrongly interpreted the judgment of the Hon’ble Division Bench of this Court and rejected the petitioner’s request and has issued impugned demand. On perusal of the impugned demand, it is seen that the petitioner was not afforded an opportunity prior to the same being passed. It may be true that the statute does not specifically provide for an opportunity being granted. Nevertheless, when the issue involved is pertaining to demand of penal interest and the petitioner’s case is based upon a decision of this Court, it would have been in the fitness of things, on the part of the first respondent to have provided an opportunity of personal hearing to the petitioner. Since the first respondent has interpreted the judgement for certain reasons, if an opportunity of personal hearing had been granted, the petitioner would have been able to clarify as to the effect of the judgment of the Hon’ble Division Bench in the case of Amutha Mills Private Limited (supra). The first respondent seeks to distinguish the judgment by stating that in the case of Amutha Mills Private Limited (supra), the IFST agreement was not cancelled whereas, it has been cancelled in the case of the petitioner. The case in Amutha Mills Private Limited (supra) was that as per the terms of the deferral agreement, in the event of default in the repayment of IFST deferral loan, the loan can be recoverable along with interest at 24% per annum calculated from the due date for repayment of loan and not from the date on which the IFST deferral loan was availed. The appellant therein, relied upon a decision of the Tamil Nadu Taxation Special Tribunal in O.P.Nos.65 to 68 of 1998. The Hon’ble Division Bench noted that the decision of the Special Tribunal has been accepted by the Commercial Taxes Department, as the learned Special Government Pleader, who was appearing on behalf of the respondent in those appeals did not dispute the said legal position. However, it was contended on behalf of the respondent therein that the appellant/petitioner had stopped the production in 2002 and therefore, they are liable to pay penal interest from November, 2002 in terms of Circular issued by the Commercial Taxes and Religious Endowments Department, dated 18.03.1994.

5.The Hon'ble Division Bench did not accept the submission and observed that the circular shows that it was only in the form of recommendation and this term has not been specifically incorporated in the agreement.

6.Therefore, in the facts of the said case, the appellants were directed to pay penal interest only with effect from June, 2002 (i.e.) the due date for re-payment of loan and not from the date on which IFST deferral loan was availed.

7.In Srinivasa Steel vs.The Joint Commissioner (CT) and another in W.P.(MD) Nos.12837 to 12847 of 2015, dated 10.08.2015, the petitioner challenged the order passed by the

Joint Commissioner, dated 07.07.2011 and sought for a direction upon the Joint Commissioner to accept the application made by them in Form I dated 30.04.2012.

8.The said Srinivasa Steel had entered into an IFST deferral agreement for repayment under the deferral scheme after a period of 9 years. Thereafter, the petitioner firm availed the Samadhan Scheme under the Tamil Nadu Sales Tax (Settlement of Arrears) Tax, 2011 by filing an application under Form I, dated 30.04.2012. As per the terms of the agreement, the petitioner therein was entitled for tax holiday from 07.07.1995 to 06.07.2004. Ultimately, the IFST deferral agreement was cancelled on 16.12.2003, in violation of terms of condition of agreement. While so, a show cause notice was issued by the Joint Commissioner proposing to reject the application filed by the petitioner therein under the Samadhan Scheme. While submitting the application under the Samadhan Scheme, the petitioner therein calculated and paid interest from 16.06.2003. The Joint Commissioner did not agree with the calculation done by the petitioner and demanded interest from the date of filing of the monthly return for the year 1995-96. The petitioner therein filed a reply to the notice issued by the Joint Commissioner stating that they are liable to pay interest only after the period of the payment of tax.

9.The petitioner placed reliance on the decision in the case of Amutha Mills Private Limited (supra) and Mrs.Kalpatharu Spinning Mills vs. Commercial Tax Officer in W.P.(MD) No.19060 of 2009 dated 01.12.2010. The respondent therein sought to distinguish the decision in the case of Amutha Mills Private Limited (supra) stating that the facts pleaded therein are totally different and that the Hon'ble Division Bench did not go into the legality of the issue involved and question of law has not at all been decided there upon, the Court took into consideration the submission on either side and allowed the writ petition by order dated 10.08.2015, wherein reference was made to the decision of the Hon'ble Division Bench in Amutha Mills Private Limited (supra). The operative portion of the order reads as follows:

> "6.In order to give quietus to this matter, it is more relevant to extract the order of the First Bench of this Court in W.A.No.1482 of 2006 dated 06.12.2006.
>
> "....2.The learned counsel appearing for the appellant/petitioner submitted that as per the terms of the deferral agreement, in the event of default in the repayment of the IFST deferral loan, the loan can be recoverable along with the interest at 24% per annum calculated

> from the due date for repayment of loan. Therefore, the penal interest, if any, should be calculated only from the due date for repayment of the loan and not from the date on which the IFST deferral loan was availed. He submitted that the issue has already been settled by the Tamil Nadu Taxation Special Tribunal in O.P.Nos.65 to 68 of 1998. The decision of the Special Tribunal has been accepted by the Commercial Taxes Department. This position is not disputed by the learned Special Government Pleader but he submitted that since the appellant/petitioner stopped the production in 2002, they are liable to pay the penal interest from November, 2002 in terms of circular of the Commercial Taxes and Religious Endowments Department dated 18.03.1994. However, a perusal of the said circular shows that this was only in the form of recommendation and this terms has not been specifically incorporated in the agreement. In the circumstances, we are of the view that the appellant/petitioner shall be liable to pay penal interest only with effect from June, 2003. This writ petition is disposed of accordingly.....”
>
> 7.The order made in W.A.No.1482 of 2006 dated 06.12.2006 still governs the field. Following the said order, subsequently, W.P.No.19060 of 2009 came to be allowed on 01.12.2010. Therefore, the order impugned in these writ petitions stand set aside and the Department is directed to collect the penal interest only from the date on which the agreement was cancelled and not from the date of returns filed by the petitioner firm.
>
> In the result, these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.”

10.The above referred decision holds the field as on date, so to say that the liability to pay penal interest can be only from the date on which repayment is due and not on the date on which return has been filed. The interpretation sought to be given by the first respondent in the impugned notice is incorrect interpretation.

11.Therefore, this Court is inclined to interfere with the impugned proceedings and remand the matter to the first respondent for fresh consideration, as the petitioner has submitted an application for re-considering the request made by the petitioner vide their application dated 17.04.2017.

12.Thus, for the above reasons, these writ petitions are allowed, the impugned notices are set aside and the matter is remanded to the first respondent for fresh consideration, who shall take note of the decisions referred to above and pass orders on merits and in accordance with law after affording an opportunity of personal hearing to the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Joint Commissioner (CT),
   Commercial Taxes Building,
   Salem Division, Salem.

2. The Assistant Commissioner (CT),
   Sankari Assessment Circle,
   Sankari, Salem District.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.64723
+1cc to the Special Government Pleader(T), S.R.No.64649

W.P.Nos.23956 to 23958 of 2017

GMI(CO)
CA(06/10/2017)