IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.7259 & 7260 of 2006 &
W.P.M.P.Nos.7972 & 7973 of 2006

M/s.Varma Dyeing,
Rep. by its Partner, Mr.Santhanakrishnan,
513/1, Manikararkadu, Kasipalayam,
Vijayapuram P.O., Tirupur,
Coimbatore District. ... Petitioner in both W.Ps.

Vs.

1.The Joint Commissioner (CT),
(Revision Petition)
Office of Commissioner of Commercial Taxes,
Chepauk, Chennai - 5.

2.The Deputy Commercial Tax Officer,
Tirupur (Rural) Circle,
Tirupur, Coimbatore District.
... Respondents in both W.Ps.

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the first Respondent in R.P.No.JJ2/103/2005 and quash the order dated 06.12.2005.

For Petitioner (in both WPs.) : Mr.M.Hari Haran
For Respondents (in both WPs.) : Mr.S.Kanmani Annamalai, Additional Government Pleader

C O M M O N O R D E R

Heard Mr.M.Hari Haran, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondents.

2.Learned counsel on either side submitted that the issue involved in this writ petition is covered by the decision in the case of E.I.D.Parry (India) Ltd., Vs. The Assistant Commissioner of Commercial Taxes, Chennai (and another appeal) reported in

(2005) 4 RC 767 and the same has been followed by this Court in the case of M/s. General Industrial Leathers Pvt., Ltd., Vs. The Joint Commissioner (CT) (RP), Chepauk, Chennai and another in W.P.No.19108 of 2005 dated 10.08.2016, the operative portion of which reads as follows:

> "4.Thus the question would be as to whether interest is liable to be demanded under Section 24 (3) of the TNGST Act. The issue is answered by the Hon'ble Supreme Court, in favour of the assessee/dealer, in the case of (E.I.D. Parry (India) Pvt., Ltd., Vs. Assistant Commissioner of Commercial Taxes, reported in (2005) 4 RC 767.
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> 5.In fact, I had an occasion to consider somewhat an identical issue in the case of (Dharmapuri District Co-operative Milk Producers Union Ltd., Vs. State of Tamil Nadu and others), in W.P.No.5929 of 2005, dated 03.08.2016. In the said case, as contended herein, the learned Additional Government Pleader referred to Section 13 of the TNGST Act, and submitted that once returns are accepted, then, there is no question of assessment to be made and the dues can be claimed. This Court, after taking into consideration the decision rendered in the case of E.I.D. Parry India Ltd., (supra), allowed the writ petition. In the said case also, there was differential tax amount, payable by the petitioner on account of the dispute raised before this Court as regards the payment of tax. The petitioner therein filed returns and remitted the tax at 4% as, at the relevant point of time, they enjoyed the benefit of an interim order, which was granted based on the interim injunction granted in Writ Petition No.7766 of 1991, by which, the Commercial Taxes Department was injuncted from collecting tax more than 4%. Ultimately, the Writ Petition No.7766 of 1991 was dismissed, and the remaining differential amount was paid. The question arose as to whether penalty should levied on the same. The issue was answered in favour of the dealer on the following lines:-
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> "7.The learned Additional Government Pleader, referring to Section 13 submitted that once returns are accepted, then there is no question of any assessment to be made and due can be raised. Section 13 of the Act deals with advance payment of tax and for the remaining tax, there should be a provisional assessment and on such determination and intimation from the dealer, he shall pay the tax.

However, in the instant case, there is no record to show that provisional assessment was made and the notice calling upon the petitioner to pay the differential rate of tax was only on the ground that the petitioner did not remit 10% tax but remitted only 4% tax. But the petitioner did not admit the return. Therefore, if it is a case where the petitioner admitted the return, the tax liability became crystallized and the petitioner does not pay the amount, then the Assessing Officer would be entitled to issue notice and upon violation to pay the amount, interest would be attracted. In the instant case, the petitioner did not admit his return and assessment was completed and he was assessed to tax @ 10% only on 27.10.1997 i.e., after about seven years after the relevant period, viz., August and September 1991. After the Assessment Authority held that tax is liable to be paid @ 10%, the petitioner paid the differential tax of 6% immediately after the order was passed in 1997. In such circumstances, the provisions of Section 13 would not be attracted to the facts of the present case. Thus applying the legal principles as enunciated by the Hon'ble Supreme Court in EID Parry India Ltd., it is held that the demand for interest is not tenable".

6.Thus, in the light of above orders, the writ petition is allowed, the impugned proceedings, levying interest under Section 24(3) of the Act are quashed. No costs. Consequently, connected miscellaneous petition is closed."

3.In the light of the above orders, these writ petitions are allowed and the impugned proceedings levying under Section 24(3) of the Act are quashed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To
1. The Joint Commissioner (CT),
(Revision Petition)
Office of Commissioner of Commercial Taxes,
Chepauk, Chennai - 5.

2. The Deputy Commercial Tax Officer,
Tirupur (Rural) Circle,
Tirupur, Coimbatore District.

+ 2 cc to M/s.MD.Ghafoorur Rahman, Advocate,SR.56139

+ 1 cc to The Special Govt.Pleader(Taxes), SR.56196

W.P.Nos.7259 & 7260 of 2006

SK(CO)
NR 08/09/2017