IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2017

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THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.5155, 5303 and 5304 of 2006

M/s. Talent Textile Process,
College Road, Athuvali Thottam,
Anapalayam, Sirupooluvapatti,
Tiruppur, Coimbatore District.
rep. by its Partner. ... Petitioner in all 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,
Tiruppur (Rural) Circle,
Tiruppur, Coimbatore District.
... Respondents 1 and 2 in all W.Ps

Prayer in W.P.No.5155 of 2006 : Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the first respondent, in R.P.No.J1/276/2004, and to quash the order, dated 30.12.2005.

Prayer in W.P.No.5303 of 2006 : Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the first respondent, in R.P.No.J1/275/2004, and to quash the order, dated 30.12.2005.

Prayer in W.P.No.5304 of 2006 : Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the first respondent, in R.P.No.JJ2/28/2005, and to quash the order, dated 05.10.2005.

For Petitioner in all W.Ps. : Mr. M.Hariharan

For Respondents in all W.Ps. : Mr.K.Venkatesh
Government Advocate

COMMON ORDER

Heard Mr. M.Hariharan, the learned counsel appearing for the petitioner and Mr.K.Venkatesh, the learned Government Advocate for the respondents.

2. The learned counsel appearing for the petitioner submitted that the issue involved in these Writ Petitions is squarely covered by the decision of this Court, in the case of (M/s. General Industrial Leathers Pvt. Ltd., Vs. The Joint Commissioner (CT) (RP) and another) in W.P.No.19108 of 2005, dated 10.08.2016, wherein, this Court, taking note of the decision of the Hon'ble Supreme Court, in (E.I.D. Parry (India) Pvt. Ltd., Vs. Assistant Commissioner of Commercial Taxes, reported in (2005) 4 RC 767, allowed the Writ Petition. For better appreciation, the operative portion of the order 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:-

> "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. The learned Government Advocate for the Revenue does not dispute the submission made by the learned counsel for the petitioner that the issue involved in these Writ Petitions is covered by the aforesaid decision.

4. Thus, following the above decision, the present Writ Petitions are allowed and the impugned proceedings levying interest under Section 24 (3) of the TNGST Act are quashed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

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

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

+3cc's to Mr.Md.Ghafoorur Rahman, Advocate, S.R.Nos.55420 & 55421
+1cc to the Special Government Pleader(T), S.R.No.54985

Writ Petition Nos.5155, 5303 and 5304 of 2006

SK(CO)
CA(6/09/2017)