IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.25122 of 2004

Tvl.International Refrigeration Company,
rep. By its Proprietor Kamal Babbar,
154, Thambu Chetty Street,
Chennai - 600 001. ... Petitioner

Vs.

1.The Deputy Commissioner (CT)
Chennai, (North) Division,
Commercial Taxes Buildings,
Greams Road, Chennai - 6.

2.The Commercial Tax Officer,
Harbour V Assessment Circle,
191, NSC Bose Road,
Chennai - 1. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent in his proceedings in RC 10854/2002/C3 / T/0080006/1995-96 dated 17.06.2004 and quash the same as illegal and direct the first respondent to entertain the Application in Form I dated 12.08.2002 filed by the petitioner by adjusting the excess amount paid by the petitioner towards shortfall in penalty and proceed in accordance with law for issuance of the certificate of settlement.

For Petitioner : Mr.S.Ramanathan

For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader

ORDER

Heard Mr.S.Ramanathan, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents.

2.The petitioner has filed this writ petition challenging an order passed by the 1st respondent rejecting the application filed by the petitioner in Form No.I under the provisions of the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002. In the application filed by the petitioner, the petitioner remitted 50% of the disputed tax being Rs.2,11,588/-. However, the petitioner had already paid in excess of the said amount viz., Rs.2,79,593/-. Since the petitioner also disputed the penalty, they were required to pay 25% of the 50% of the disputed tax. This amounted to Rs.52,897/-. The petitioner requested that this amount may be adjusted as the excess tax paid by the petitioner, from and out of Rs.2,79,593/- after giving credit to Rs.2,11,588/-, being 50% of the disputed tax. The 1st respondent rejected the application referring to Section 6(4) of the Samadhan Act stating that whatever payment made in excess cannot be adjusted or refunded. The Act which states that 'If the amount paid by the Applicant exceeds the amount determined under Section 6 of the Samadhan Act, the excess amount paid shall not be refunded'.

3.The learned counsel for the petitioner submitted that in identical circumstances, the Tamil Nadu Taxation Special Tribunal, in Appasamy Associates V. Deputy Commissioner (CT), Chennai (Central) Division, Chennai and another, reported in 2003 Vol.132 STC 312, allowed the original petition and directed adjustments. Therefore, it is submitted that the excess tax paid by the petitioner should be adjusted towards penalty amount for being entitled to avail the Samadhan Scheme.

4.The 2nd respondent, in the written instruction given to the learned Special Government Pleader dated 15.02.2005, has reiterated the stand taken in the impugned order. At this juncture, it has to be seen as to whether in spite of the embargo under Section 6(4), the petitioner would be entitled to seek for adjustment. Admittedly, the petitioner has not sought for refund. The answer to the question lies in Section 7 of the Act. For better appreciation, the provision is quoted herein below:

> "7.(1)The amount under sub-section (1) of Section 6 shall be determined as follows:-
>
> (a)Where it relates to any tax in dispute, at the rate of fifty percentum of the tax in dispute: or

(b) Where it relates to any tax and penalty in dispute, at the rate of fifty percentum of the tax in dispute and at the rate of twenty-five percentum of such fifty percentum of the tax in dispute:

(c) Where it relates to any penalty in dispute, at the rate of fifteen percentum of the penalty in dispute:

(d) Where it relates to any interest in dispute, at the rate of twenty-five percentum of the interest in dispute:

(2) The interest payable by an applicant on the amount determined under clauses (a), (b) and (c) of sub-section (1) shall be twenty-five percentum of the interest payable at the rate specified under the relevant Act and the same shall be paid before the issue of certificate under section 8."

5.Section 7(1)(b) of the Act would be relevant as the petitioner has disputed the tax as well as the penalty, in terms of the said provision, the petitioner has to pay 50% of the disputed tax and since he has also disputed the penalty, he has remitted 25% of the 50% of the tax in dispute. The language in the statute is clear that the 25% is not on the penalty imposed, but it is on 50% of the tax in dispute. Thus, the framers of the legislation were conscious that at times penalty being 150 times of the tax is imposed, it will be very harsh on the dealers to insist upon payment of 25% of the penalty for being entitled to avail the benefit of the Samadhan Scheme. Thus, on a plain reading of Section 7(1)(b) of the Act would show that whatever payments paid towards the disputed tax could very well be reckoned for payment towards the dispute regarding penalty because what is directed to be paid is 25% of such 50% of the tax in dispute. Therefore, the impugned order has to be necessarily set aside.

6.However, after the matter was heard and the order was in process of being dictated, the learned Additional Government Pleader produced before this Court an order passed by the 1st respondent dated 08.06.2010, from which, it is seen a Certificate of Settlement of Arrears in Form No.V under Rule 5(1) has been issued by the Joint Commissioner (CT), Chennai (North) Division, Chennai - 6.

7.In the light of the above, though nothing requires to be adjudicated in the writ petition, the Court having heard the parties has rendered its opinion on the issue. Accordingly, the Writ Petition is closed. No costs.

Assistant Registrar
Dt.8.11.17

//True Copy//

Sub Assistant Registrar

To

1.The Deputy Commissioner (CT)
Chennai North Division,
Commercial Taxes Building,
Greams Road, Chennai-6.

2.The Commercial Tax Officer,
Harbour V Assessment Circle,
191, NSC Bose Road, Chennai-1.

+1 cc to Mr.S.Ramanathan,advocate,sr.94342

+1 cc to Spl.Govt.Pleader,sr.74136.

Nm(co)
krd 27/11

W.P.No.25122 of 2004