IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2018

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos..6304 & 6305, 6342 & 6343 of 2006

M/s.Pantone Dyers
586/2-B, Kothukadu Thottam
Veerapandi
Tirupur
Coimbatore District .. Petitioner in W.P.Nos.6304 & 6305/2006

M/s.RMS Dyeing
SF.610/2, Samba Thottam
Veerapandi
Tirupur
Coimbatore District .. Petitioner in W.P.Nos.6342 & 6343/2006

v.

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

2. The Dy. Commercial Tax Officer
Tirupur (RUral) Circle)
Tirupur, Coimbatore District. .. Respondents in all WPs

W.P.Nos.6304/2006 Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the 1st respondent in R.P.No.JJ2/267/2004, quash the order dated 05.10.2005.

W.P.Nos.6305/2006 Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the 1st respondent in R.P.No.J1/30/2005, quash the order dated 30.12.2005.

W.P.Nos.6342/2006 Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the 1st respondent in R.P.No.JJ2/278/2004, quash the order dated 14.10.2005.

W.P.Nos.6343/2006 Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the 1st respondent in R.P.No.JJ2/277/2004, quash the order dated 14.10.2005.

For Petitioner : Mr.Naveen Durai Babu
For Respondents : Mr.M.Hariharan
Addl. Govt. Pleader

COMMON ORDER

Heard Naveen Durai Babu, learned counsel appearing for the petitioners and Mr.M.Hariharan, learned Additional Government Pleader appearing for the respondents.

2. In all these writ petitions, the petitioners, who are registered dealers, on the file of the second respondent, have challenged the orders passed by the revisional authority, viz., Joint Commissioner (CT) (RP).

3. By the impugned proceedings, levy of penalty has been confirmed. Identical issue came up for consideration before this court in the case of General Industrial Leathers Pvt. Ltd., Chennai v.the Joint Commissioner (CT) (RP), Office of Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai - 600 005 made in W.P.No.19108 of 2005, dated 10.08.2016. The court took into consideration the decision of the Hon'ble Supreme Court in the case of (E.I.D. Parry (India) Pvt. Ltd., Vs. Assistant Commissioner of Commercial Taxes, reported in (2005) 4 RC 767 and allowed the writ petition. The operative portion order reads as follows:-

> "2. The petitioner, who is a registered dealer, on the file of the second respondent, under the provisions of erstwhile Tamil Nadu General Sales Tax Act, 1959 (hereinafter, referred to as, 'TNGST Act') has filed this Writ Petition, challenging the order passed by the first respondent/Joint Commissioner (CT) (RP). This order, is in exercise of revisional powers, by which, the first respondent rejected the Revision Petition filed by the dealer, dated 27.12.2002, challenging the order passed by the first Revisional Authority, viz., Deputy Commissioner (CT) Chennai, (South) Division, in R.P.No.73 of 1998, dated 13.09.2002. This is an order, confirming the order passed by the Assessing Officer, viz., Commercial Tax Officer/second respondent, dated 31.03.1998, which is an order of assessment for the year 1992-93.
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> 3. The challenge in the impugned proceedings is only with regard to the payment of interest under Section 24, sub-section 3 of TNGST Act. In the instant case, undisputed facts are that the petitioner had filed their returns, claimed exemption and ultimately, the tax was remitted, after the legal issue with regard to the manner of taxation on REP was decided by the Hon'ble Supreme Court on 01.05.1996.
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> 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.

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. "

4. The learned counsel for the petitioners submits that these writ petitions are squarely covered by the aforementioned decision.

5. The respondents did not dispute the said submission.

6. In the light of the same, the Writ Petitions are allowed, the impugned proceedings, levying interest under Section 24 (3) of the Act are quashed. No costs.

Sd/-/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Rj
To

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

2. The Dy. Commercial Tax Officer
Tirupur (RUral) Circle)
Tirupur, Coimbatore District.

+1cc to Special Government Pleader SR.No.38343
+1cc to Mr.Md.Ghafoorur Rahman, Advocate SR.No.38229

sm:27.6.2018