IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2018

CORAM

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P. Nos.50305 and 50306 of 2006

Mahe Beach trading company,
Palakkal, Mahe,
Pondicherry,
Rep. by K.M.Abdul Gafoor (deceased)
Now rep. by his legal heirs
2.K.E.Rehmath
3.K.E.Noushad
4.K.E.Regina
5.K.E.Reesha
P2 to P5 petitioners substituted
in the place of deceased petitioner
as per order dated 26.02.2010 in
MP.No.1/2010 in WP.No.50305/2006 ... Petitioner in WP.No.50305/2006

Surya Service Station,
Hindustan Petroleum Dealers,
Paloor, Mahe,
Pondicherry,
Rep. by K.M.Abdul Gafoor (deceased)
Now rep. by his legal heirs
2.K.E.Rehmath
3.K.E.Noushad
4.K.E.Regina
5.K.E.Reesha
P2 to P5 petitioners substituted
in the place of deceased petitioner
as per order dated 26.02.2010 in
MP.No.1/2010 in WP.No.50306/2006 ... Petitioner in WP.No.50306/2006

सत्यमेव जयते
WEB COPY

Vs

The Commercial Tax Officer,
Mahe, Pndicherry. ... Respondent in both Wps

https://hcservices.ecourts.gov.in/hcservices/

Prayer:(WP.No.50305 of 2006) Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records of the respondent in his proceedings dated 28.09.2006 in PGST No.501014/99-2000 and quash the same.

Prayer:(WP.No.50306 of 2006) Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records of the respondent in his proceeding dated 28.09.2006 in PGST No.501143/1999-2000 and quash the same.

For Petitioners :: Mr.K.Raja Srinivas
(in both WPs)

For Respondents :: Mr.J.Kumaran
Government Advocate
(in both WPs)

C O M M O N   O R D E R

Heard, Mr.Raja Srinivas, learned counsel for the petitioners and Mr.J.Kumaran, learned Government Advocate appearing on behalf of the respondent.

2.On the last hearing i.e., 11.12.2017, the learned counsel for the petitioner submitted that the impugned notice is barred by limitation by referring to Section 18(1) of the Pondicherry General Sales Tax Act, 1967 (in short "the PGST Act") stating that the impugned demand has been made beyond the period of five years from the expiry of the year to which the tax relates.

3.Recording the said submission, the learned Government Advocate was directed to get the original file in the matter and accordingly, the original file has been produced by the officer in person before this court. From the original file it is seen that the Assessment order for the Assessment Year 1999-2000 was completed only on 05.01.2005. From paragraph 10 of the counter affidavit, it is seen that the petitioner did not cooperate for the assessment proceedings and filed the annual return in Form A1 only on 05.01.2005.

WEB COPY

4.Thus, the impugned demand is not a demand for tax, but interest for the belated payment @ 2% per month. The petitioner cannot escape from the liability as this interest is automatic on delayed payment of tax. At the time when the writ petition was admitted, the petitioner was granted an interim order subject to the condition to pay 50% of the amount demanded in the impugned order, which has been complied with by the

https://hcservices.ecourts.gov.in/hcservices/

petitioner. The petitioner has to, therefore, settle the remaining amount to be paid.

5.For the above reason, there is no merit in the writ petition and the writ petition stands dismissed and the petitioner is granted 60 days time to pay 50% of the balance amount of interest payable in terms of the impugned notices. It goes without saying that under the provision of the PGST Act there is no provisions vested with the Assessing Officer to collect the tax in installments. It is not known as to why such indulgence has been given to the dealers or petitioners carrying on business on cash and carry basis. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

maya/sai

To

The Commercial Tax Officer,
Mahe, Pondicherry.

+1cc to Mr.Jaikanth, Advocate, S.R.No.1492
+1cc to Mr.Jaikanth, Advocate, S.R.No.1490
+1cc to the Special Government Pleader Taxes, S.R.No.1673
+1cc to the Government Pleader for Puducherry, S.R.No.1461 & 1462

W.P.Nos.50305 and 50306 of 2006

NRK(CO)
CS/08/02/18

HIGH COURT OF JUDICATURE MADRAS
सत्यमेव जयते
WEB COPY