BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2018
CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)No.6853 of 2013
and
M.P(MD)No.1 of 2013

M/s.Suvi & Co.,
represented by its
Partner,
S.P.S.Vijayaraja,
13-A, East Nappalayam Street,
Madurai. ... Petitioner

Vs.

1.The Joint Commissioner (CT) (Designated Authority),
Commercial Taxes Building,
Dr.Thangaraj Salai,
Madurai.

2.The Assistant Commissioner (CT)(FAC),
Chitrakara Street Circle,
Commercial Taxes Building,
Dr.Thangaraj Salai,
Madurai. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus to call for the records of the first respondent in ROC.No.1238/2012/A7 for the assessment year 2005-06 and quash the order dated 16.04.2013 as unlawful and invalid and further direct him to issue certificate of settlement of arrears as per Section 8 of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011.

For Petitioner : Mr.R.D.Ganesan

For Respondents : Mr.S.Dhayalan
Government Advocate

ORDER

The petitioner is a dealer registered under the Tamil Nadu General Sales Tax Act, 1959 [in short 'TNGST Act']. For the assessment year 2005-06, he filed his return and the second respondent has passed an assessment order assessing the taxable turn over as Rs.39,00,000/- by adopting the rate of tax at 16% against the claim of 4% tax. The said order of the second respondent was challenged before this Court in W.P(MD)No.8113 of 2009 which was finally disposed of on 15.03.2012.

2. According to the petitioner, if at all, intererst is due, it commences from 04.11.2009. In the meanwhile, the Government introduced Samadhan Scheme, for which, the sales tax arrears are sought to be collected. The settlement of arrears was specified for the period upto 2006-07, for which, the assessment has been made prior to 01.08.2011.

3. With a view to avail the benefit of the scheme, the petitioner made an application before the Designated Authority under the Samadhan Scheme enclosing necessary documents. As per the scheme, the applicant shall pay 10% of the penalty and 25% of the interest quantified. Insofar as the petitioner is concerned, the penalty amount was Rs.3,99,797/- as per the demand raised by the respondents, dated 05.02.2010. In that order, it is stated that the dealers are liable to pay interest under 24(3) of the TNGST Act on the tax paid for the assessment year 2004-05. Even though he stated that penalty and interest will be paid, the respondents have specified the arrears of tax as Rs.3,99,797/- and the interest was not quantified. Therefore, the petitioner paid 10% of the penalty amount to the tune of Rs.39,980/-.

4. Section 7(d) of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011 [Tamil Nadu Act No.29 of 2011], reads as follows:

> "7. Rate applicable in determining amount payable.-
> The amount payable by the applicant and to be waived shall be determined as follows:
> ***** *****
> ***** *****
> (d) Where it relates to arrears of penalty or interest or both and where there is no corresponding arrears of tax pending collection on the date of application, the applicant shall pay ten per cent of the penalty and twenty-five per cent of interest, the balance of penalty and interest shall be waived."

5. At the time of scrutinising the application of the petitioner, the respondents have found that the petitioner has not paid any interest. Therefore, by way of proceedings in ROC.No.1238/2012/A7, dated 04.10.2012, have rejected the application for not paying the interest. In the said communication, they have given their break-up details with regard to the delay in payment of interest and quantified the interest portion. They have called for the objections to the proposals. The petitioner/applicant has filed his objections stating that on the date of the demand, i.e., 05.02.2010, the interest amount was not quantified. The petitioner has paid 10% of the penalty, but the petitioner was precluded from making the payment towards interest portion. After considering the objections, the first respondent passed the impugned order dated 16.04.2013.

6. The respondents have stated that total amount payable by the petitioner as per Section 7(d) of the Tamil Nadu Act No.29 of 2011, worked out to Rs.97,406/-, whereas he had paid only a sum of Rs.39,980/- leaving out the balance of Rs.57,426/-. It is mandatory for any dealer who wants to avail the benefit of the scheme of making payment of interest as well as penalty. Since the petitioner has failed to make payment towards interest, he is not entitled to the benefits of the Samadhan Scheme as per Section 6(3) of the Tamil Nadu Act No.29 of 2011 and therefore, they have rejected the claim of the petitioner. Challenging the same, the petitioner is before this Court.

7. The learned Counsel for the petitioner would rely on the judgment of this Court in Sornammal and Company v. Assistant Commissioner (CT), CT Buildings, Madurai Road, Virudhunagar and another reported in (2009) 26 VST 573 (Mad), wherein it is held that even before quantifying the interest, an opportunity for personal hearing should be given to the assessee. Since no notice was issued, the order passed under Section 24(3) of the TNGST Act was set aside as violative of principles of natural justice.

8. In an yet another judgment in Batliboi and Co., Ltd., v. Joint Commissioner (CT), Chennai (North) Division, Chennai and another reported in (2011) 38 VST 465 (Mad), this Court has clearly stated that the interest will be only on payment of arrears and it cannot be on the total tax demanded.

9. Insofar as the instant case is concerned, the petitioner has remitted the payment as per Section 7(d) of the Tamil Nadu Act No.29 of 2011 on the demanded penalty amount.

10. Controverting the said submissions, the learned Government Advocate appearing for the respondents vehemently contended that the demand dated 05.02.2010 has clearly specified that the petitioner has to make the payment of arrears of penalty to the tune of Rs.3,99,797/- along with interest as per Section 24(3) of the TNGST Act. The petitioner has paid only 10% of the penalty amount, but deliberately did not make the payment of 25% of the interest. Therefore, the rejection order made by the respondents is sustainable and thus, warrants no interference.

11. I have considered the rival submissions.

12. Admittedly, Section 7(d) of the Tamil Nadu Act No.29 of 2011 clearly specifies that 10% of the penalty amount and 25% of the interest shall be made at the time of filing the application. In the event of such payment, the balance penalty and interest shall be waived. But, in the instant case, notice issued by the respondents dated 05.02.2010 has only demanded the arrears of penalty to the tune of Rs.3,99,797/-, but has not quantified the interest. It is only observed that the dealers are liable to pay interest under Section 24(3) of the TNGST Act on the tax paid Rs.3,00,000/- &

Rs.8,26,000/- for the years from 2004-05. Such a demand shall be considered as vague. Whenever demand is made, the amount demanded shall be specifically quantified.

13. In the instant case, there is no such quantification. But, on the other hand, the respondents at the time of scrutinising the application, have come out with a break-up details of penalty and interest portion of the tax. After proposing to reject the application, he had called for objections. As held by this Court in Sornammal and Company v. Assistant Commissioner (CT), CT Buildings, Madurai Road, Virudhunagar and another reported in (2009) 26 VST 573 (Mad), the quantification of interest shall be made by the respondents and that too, after affording the opportunity of personal hearing to the assessee. If the dealer fails to make the payment after quantification and that will amount to lapse on his part. But, a reading of the circular issued by the Commissioner of Commercial Taxes, dated 03.11.2011, it is specified that the scheme was closed on 30.04.2012. Whereas the scrutiny was made much after the scheme period and the notice was issued only on 04.10.2012, i.e., after a period of five months after the scheme was closed on 30.04.2012. Had the respondents quantified the interest within that period of scheme, i.e., on or before 30.04.2012, the petitioner would have paid 25% of the interest which is quantified by the respondents in their notice dated 04.10.2012.

14. Therefore, the delayed quantification or non-quantification of interest on the date of demand, in fact, precluded the petitioner from making the payment of interest. Therefore, the rejection of the application made by the petitioner under the scheme on the ground that he has not made the payment of interest cannot be sustained. The respondents should have quantified the interest and demanded the payment and if the payment was not made after quantification, the rejection could be justified. In the absence of quantification of interest, the rejection made by the respondents is not justified.

15. Therefore, the impugned order passed by the first respondent in ROC.No.1238/2012/A7 for the assessment year 2005-06, dated 16.04.2013, does not stand the scrutiny of law and accordingly, the same is set aside. The application under the Samadhan Scheme filed by the petitioner is in accordance with Section 7(d) of the Tamil Nadu Act No.29 of 2011. Therefore, the respondents are liable to issue a Certificate of Settlement.

16. In the result, this writ petition is allowed as above. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1.The Joint Commissioner (CT) (Designated Authority),
Commercial Taxes Building,
Dr.Thangaraj Salai,
Madurai.

2.The Assistant Commissioner (CT)(FAC),
Chitrakara Street Circle,
Commercial Taxes Building,
Dr.Thangaraj Salai,
Madurai.

+1CC TO MR.R.D.GANESAN, ADVOCATE IN SR.NO.69228.

+1CC TO THE SPECIAL GOVERNMENT PLEADER IN SR.No.69374.

RSB
DS SKN SAR-2;07.09.2018; 5P/5C

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