IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2019

CORAM :

THE HON'BLE JUSTICE DR.VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.A.No.1488 of 2011 and M.P.No.1 of 2011

The Assistant Commissioner (CT) Commercial Tax Officer,
Fast Track Assessment Circle-II
Greams Road, Chennai-600 006. .. Appellant/Respondent

-vs-

Hindustan Lever Limited,
No.101, Santhome High Road,
(Entrance from South Canal Bank Road)
Chennai 600 028 .. Respondent/Petitioner

Writ Appeal filed under Section 15 of the Letters Patent against the order dated 31.01.2007, in W.P.No.35233 of 2005.

Prayer in WP.No.35233 of 2005 (OP.No.283 of 2003) :- The Original Petition is filed before the Tamil Nadu Taxation Special Tribunal seeking for the relief of calling for the records on the files of the respondent in TNGST/1501030/1996-97 dated 10.1.2003 and quash the same as illegal.

For Appellant : Mr.Mohammed Shaffiq Special Government Pleader (T)

For Respondents : Mr.N.Inbarajan

O R D E R
(Judgment of the Court was made by Dr.Vineet Kothari, J)

This Writ Appeal is directed against the order dated 31.01.2007 passed by the learned single Judge in W.P.No.25233 of 2005.

2. By the impugned order, the learned Single Judge held that the in the absence of any substantive provision for levy of interest, there cannot be any levy of interest.

3. Both the learned counsels submitted that unfortunately, the amendment of Section 2 of Tamil Nadu Additional Sales Tax Act 2005 which received the accent of the Governor on 12.10.2005 with regard to the imposition of interest was not brought to the notice of the learned Single Judge when the Impugned Order was passed on 31.01.2007.

4. The provisions of Amendment of Section 2 is quoted below for ready reference:

> "2. Amendment of Section 2.- In Section 2 of the Tamil Nadu Additional Sales Tax Act 1970 (hereinafter referred to as "the principal Act"), in Sub-section (1)-
>
> (1) after clause (aa), the following clause shall be inserted, namely:-
> "(aaa) On any amount of additional tax or penalty imposed by the assessing authority remaining unpaid under this Act, the dealer referred to in clause (aa) shall pay interest as specified in sub-section (3) of Section 24 of the said Act, in addition to such amount of additional tax or penalty due."
> (2) for clause (b), the following clause shall be substituted , namely:-
> "(b) The provisions of the said Act shall apply in relation to the additional tax payable under clause (aa) and the interest payable under clause (aaa) as they apply in relation to the tax and interest payable under the said Act."

5. Since, the statutory provision was not brought to the notice of the learned Single Judge which has bearing on the issue involved before the learned Single Judge, we are inclined to allow the present Writ Appeal and remand the matter back to the learned Single Judge for fresh consideration on merits.

6.Accordingly, the order dated 31.01.2007 passed in W.P.No.35233 of 2005 is set aside and the matter is restored back to the learned Single Judge with a request to dispose of the Writ Petition in accordance with law.

7. This Writ Petition is disposed of with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

The Assistant Commissioner (CT) Commercial Tax Officer,
Fast Track Assessment Circle-II
Greams Road, Chennai-600 006.

Copy To: The Section Officer, Writ Section,
High Court of Madras, Chennai -104.

+1 cc to M/s.N.Inbarajan,Advocate Sr.No. 94844

AKM/20.12.19/2P-4C /

W.A.No.1488 of 2011