

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.08.2019

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Writ Petition No.1230 of 2019

P.Kandasamy

... Petitioner

/versus/

1.The Chairman and Managing Director,
Tamilnadu Water Supply and Drainage Board,
No.31, Kamarajar Salai,
Chepauk,
Chennai-600 005.

2.The Executive Engineer,
Tamilnadu Water Supply and Drainage Board,
Rural Water Supply Division,
Karur.

3.The Finance Director,
Tamilnadu Water Supply and Drainage Board,
Chennai-600 005.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to pay the banking interest at the rate of 18% p.a towards the recovery of the sum of Rs.30,22,591/- for the alleged non production of Central Excise Duty Exemption for the period 24.12.2004 onwards as per the representation of the petitioner dated 18.09.2018 to the petitioner.

For petitioner : Mr.M.Rajasekhar

For Respondents : M/s.S.Eraskine Leo

O R D E R

Heard the learned counsel for the petitioner and the learned counsel for the respondents and Perused the affidavit and counter affidavit of the respective parties.

2 The petitioner herein is a contractor under the TWAD Board for the supply of water to 378 habitations in K.Paramathy

and Aravakurichi Unions in Karur District during the year 2003. While settling the bill, the respondent has withheld a sum of Rs.30,22,591/- in lieu of production of Central Excise Duty Certificate.

3 Whereas, the contention of the petitioner is that, he is not liable to pay any Central Excise Duty and therefore production of Central Excise Duty Certificate is not warranted. The respondent herein after representation has realised that the petitioner is entitled for refund of money withheld towards the Central Excise Duty Certificate. Accordingly, the Executive Engineer of the TWAD board has communicated to the petitioner vide letter dated 14.09.2009 that he shall collect the Excise duty refund on production of bills. Accordingly, the petitioner has also produced the necessary bills and after inordinate delay, the excise duty recovered from the petitioner was refunded on 18.11.2011. Hence, the writ petition seeks interest at the rate of 18% for a sum of Rs.30,22,591/- withheld by the respondent from the date of payable till the date of payment i.e., 24.12.2004 to 18.11.2011.

4 In the counter the 2nd respondent would contend that the sum of Rs.30,22,591/- was a total sum of money deducted from the bills of the petitioner herein for non production of Central Excise Duty Certificate (bills 5 to 19) the 5th bill was on 24.12.2004 and the 19th bill was on 27.07.2006. Therefore, the interest claimed by the petitioner commencing from 24.12.2004 for the entire sum of Rs.30,22,591/- not correct. Further, it is stated that there was an insolvency petition against the petitioner, therefore due to pendency of insolvency petition, the respondents were not able to refund the Central Excise Duty withheld by the respondents. Further it is also contended in the counter that the learned Sub-Judge, Mettur, vide order dated 14.02.2008 had directed the respondent not to release Rs.1 crore to the petitioners, which is inclusive of the Central Excise Duty amount retained by the respondent.

5 The reasons stated by the 2nd respondent for not refunding the Central Excise Duty amount cannot stand in the way of the petitioner claiming interest for the said amount. This Court in a similar circumstances between the very same party has held that the respondent is liable to pay the interest for the delayed payment at the rate of 7% per annum. The respondent herein having deducted a total sum of Rs.30,22,591/-, from the bills 5 to 19 when such deduction found to be not proper, the petitioner is entitled for the said sum on the date of bills. Belated payment entitles the petitioner a nominal interest. The respondent herein is liable to pay interest which, this Court has already fixed at 7% per annum in the earlier proceedings.

6 Hence, in consonance with the order of the Division Bench of this Court in W.A.(MD) No.1008 of 2013, this Writ Petition is also allowed directing the respondent herein to calculate the interest at the rate of 7% for each bill from the date of payable till the date of payment and from 18.11.2011 till the date of payment for the said amount to pay interest at the rate of 6% till the date of payment. The payment shall be made within 6 weeks from the date of receipt of copy of this order No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Chairman and Managing Director,
Tamilnadu Water Supply and Drainage Board,
No.31, Kamarajar Salai,
Chepauk,
Chennai-600 005.
- 2.The Executive Engineer,
Tamilnadu Water Supply and Drainage Board,
Rural Water Supply Division,
Karur.
- 3.The Finance Director,
Tamilnadu Water Supply and Drainage Board,
Chennai-600 005.

+1cc to Mr.M.Rajasekhar, Advocate Sr.71267

W.P.No.1230 of 2019

svi[co]
srg 12/09/2019