IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos. 24952 and 24953 of 2006
and
M.P.Nos.1, 1, 2 and 2 of 2006 and 1, 1 of 2008

Santhosh Maize & Industries Limited,
Rep. by its Manager,
R.Harinarayan Garg,
Santhosh Complex,
21, Ayyasamy Chetty Road,
Shevapet, Salem - 636 002. ..Petitioner in both the petitions

-Vs-

1. The Commercial Tax Officer,
   Leigh Bazar Circle,
   Shevapet, Salem - 636 002.
2. The Deputy Commissioner (CT),
   Salem Division, Salem.
3. The Joint Commissioner (RP),
   Chepauk, Chennai - 600 005.
4. The Branch Manager,
   Karur Vysya Bank Ltd.,
   Shevapet (Branch),
   Salem - 636 002. ..Respondents in both the petitions

Prayer in W.P.No.24952 of 2006: Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records on the files of the third respondent herein in R.P.No.J1/69/06, dated 12.07.2006 confirming the orders of the second respondent herein in R.P.No.12/06, dated 17.04.2006 and that of the first respondent herein in Assmt.No.2620619/03-04, dated 14.09.2005 and quash the same insofar as purporting to levy and recover interest under the provisions of the Tamil Nadu Additional Sales Tax Act, 1970.

Prayer in W.P.No.24953 of 2006: Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records on the files of the third respondent herein in R.P.No.J1/70/06, dated 12.07.2006 confirming the orders of the second respondent herein in R.P.No.53/05, dated 17.04.2006 and that of the first respondent herein in Assmt.No.2620619/02-03, dated 05.09.2005 and quash the same insofar as purporting to levy and recover interest under the provisions of the Tamil Nadu Additional Sales Tax Act, 1970.

For Petitioner : Mr.N.Prasad
(in both the petitions)

For Respondents : Mr.M.Hariharan, AGP (T),
(in both the petitions) for RR1 to 3

C O M M O N O R D E R

Challenge under the present Writ Petitions is to the demand of interest under Section 2(1)(aaa) of the Tamil Nadu Additional Sales Tax Act, 1970 (Tamil Nadu Act 14 of 1970), for the assessment years 2002-03 and 2003-04.

2. The respondents herein had calculated interest on the additional sales tax for the assessment year 2002-03 at Rs.13,25,000/- and for the assessment year 2003-04, at Rs.11,30,000/-. The assessment for those two years was completed on 31.03.2005 and 20.10.2006 respectively and the additional Sales Tax was determined at Rs.19,381/- and Rs.1,33,605/- respectively.

3. As submitted by the learned counsel for the petitioner, the respondents are not entitled to make the demand for interest, when no additional Sales Tax was due and payable on the date of the assessment. By placing reliance on the judgment of the Division Bench of this Court in Kone Elevator India Pvt. Ltd. vs. Commercial Tax Officer, Mandaveli Assessment Circle, Chennai, reported in [2010] 27 VST 577 (Mad), the learned counsel submitted that the interest would be payable if any additional tax or penalty imposed by the assessing authority remains unpaid. Since no additional tax remains unpaid on the date when the assessment was made, the respondents are not justified in demanding interest.

4. The above decision of the Division Bench is also followed by a learned Judge of this Court in W.P.Nos.8876 and 877 of 2009, dated 03.11.2017. The observations made in the said

decision reads as follows:

> "2.The petitioner has filed these writ petitions challenging the demand of interest under Section 24 (3) of the Tamil Nadu General Sales Tax Act, 1959 (in short "TNGST Act") for the assessment years 2002-03 & 2003-04. The question is whether such demand can be made when there was no additional sales tax due and payable by the petitioner as on the date when the assessment was completed on 30.11.2005.
>
> 3. This issue has been answered by the Hon'ble Division Bench of this Court in the case of Kone Elevator India Pvt. Ltd., vs. Commercial Tax Officer reported in (2010) 27 VST 577 (Mad). The Court, after taking into consideration the language of Section 2 (aaa) of the Tamil Nadu Additional Sales Tax Act, 1970, held that the interest is payable if any additional tax or penalty imposed by the assessing officer remains unpaid. The word used is "imposed by the assessing officer" and therefore, as per the assessment order, nothing remained unpaid on that date, so no additional tax was imposed by the assessing officer and therefore, it was held that no interest can be demanded. The above decision applies with full force to the case on hand, wherein also as per the assessment order dated 30.11.2005, nothing remained unpaid."

5. In the light of the above decisions rendered, the impugned orders dated 12.07.2006 are quashed. The Writ Petitions stand allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

pvs

To

1. The Commercial Tax Officer,
   Leigh Bazar Circle,
   Shevapet, Salem - 636 002.

2. The Deputy Commissioner (CT),
   Salem Division, Salem.

3. The Joint Commissioner (RP),
Chepauk, Chennai - 600 005.

4. The Branch Manager,
Karur Vysya Bank Ltd.,
Shevapet (Branch),
Salem - 636 002.

+1cc to Special Government Pleader(Taxes), High Court, Madras
SR.No.9867

W.P.Nos. 24952 and
24953 of 2006

MR(CO)
GMY(18/03/2019)