IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2019

CORAM

THE HONOURABLE **Dr.JUSTICE ANITA SUMANTH**

W.P.No.31819 & 31820 of 2006

Indo Shell Mould Ltd.
represented by its Managing Director
K.Jagadeesain ...Petitioner in both the W.Ps

Vs.

1.The Assistant Commissioner (CT) (FAC)
Fast Tract Assessment Circle II,
Coimbatore.

2.The State Industries Promotion
Corporation of Tamil Nadu.,
19-A Rukmani Lakshmipathy Road,
Chennai-600008 ...Respondents in both the W.Ps

Prayer in WP.Nos.31819 & 31820 of 2006:- Writ Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records on the files of the First respondent herein in his TNGST No.1801566/1999-2000 dated 07.04.2003 and CST 286156/1999-2000 dated 07.04.2003 and quash same.

For Petitioner : Mr.N.Inbarajan

For Respondent : Mr.V.Hariharan,
Government Advocate for R1
R2- No appearance
in Both the Petitions

COMMON ORDER

The petitioner has challenged proceedings dated 07.04.2003 passed by the Assistant Commissioner of Commercial Taxes/first respondent levying interest under Section 24(3) in respect of assessments made under the Tamil Nadu General Sales Tax Act, 1959 and Central Sales Tax Act, 1956.

2. The petitioner had applied for Interest Free Sales Deferral and was granted the same in terms of Eligibility Certificate dated 28.11.1998. An agreement was entered into between the petitioner and the territorial Assistant

Commissioner on 31.03.1999. The deferral periods as well as the financial years of repayment are set out as follows:

5.1.Conditions:

5.1.The sales Tax deferred will be repaid as follows:-

Deferral Period	*Financial Year of Repayment*
1.7.1996-31.3.1997	*1.7.2001-31.3.2002*
1.4.1997-31.3.1998	*1.4.2002-31.3.2003*
1.4.1998-31.3.1999	*1.4.2003-31.3.2004*
1.4.1999-31.3.2000	*1.4.2004-31.3.2005*
1.4.2000-31.3.2001	*1.4.2005-31.3.2006*
1.4.2001-30.6.2001	*1.4.2006-30.6.2006*

3. Since the petitioner had availed of the deferral only for five months i.e. April to August 1999 and did not avail of the same either prior or post the aforesaid period of five months, the Assessing Authority issued a notice dated 07.04.2003 proposing penalty under Section 24(3) of the Tamil Nadu General Sales Tax Act, 1959 (in short 'Act') and the Central Sales Tax Act, 1956. According to him, the amounts of tax have been paid belatedly, attracting the levy of penalty under Section 24(3).

4. A counter has been filed wherein the respondents do not question the eligibility of the petitioner to the deferral sought and granted, throughout the period of deferral. Thus, it is not in dispute that the petitioner is entitled to, and covered by the deferral scheme, though it did not avail the benefits of the same for a substantial portion of the Scheme. Out of a period of 60 months for which deferral was granted, it availed the Scheme only for a period of five months.

5. I am of the considered view that the provisions of Section 17A(2) of the Act would apply in the present case. The provisions of Section 17A(2) read as follows:

> ***Sec.17-A(2)*** *Notwithstanding anything contained in this Act, the deferred payment of tax under sub-section (1) or sub-section(1-A) shall not attract interest under sub-section (3) of section 24 provided the conditions laid down for payment of the tax deferred are satisfied.*

6. A reading of the aforesaid provision makes it clear that the deferred payment of tax shall not attract interest under Section 24(3) provided the conditions laid down for payment of the tax deferred are satisfied. The petitioner before me, is admittedly, covered by the provisions of the scheme and the same have not been cancelled by the Assessing Officer. The tax for the months of April to August, 1999 would be liable to be repaid only between the months of April to August of 2004 as per the schedule of repayment.

However, the payments have, even as per the annexure to the show cause notice, been paid even prior to the date of re-payment as scheduled. The details of the tax deferred and the dates on which the re-payments were effected are as follows:

TNGST:

Month to which the deferred tax relates	Amount Rs.	Due Date	Date of Payment	Delay No. of days	Interest leviable U/s.24(3)
April' 99	5,42,444-	20.05.99	19.02.00	275	99,503-
May' 99	1,86,084- 4,16,968-	20.06.99	19.02.00 20.03.00	244 273	30,270- 75,888-
June'99	2,40,632- 4,70,951-	20.07.99	20.03.00 31.12.02	243 1259	38,982- 3,95,285-
July'99	5,29,049- 3,55,183	20.08.99 ...	31.12.02 15.01.03	1228 1243	4,33,115- 2,94,320-
Aug'99	6,44,817- 66,865-	20.09.99	15.01.03 31.01.03	1212 1278	5,21,012- 54,740-
				Total:	19,43,123-

CST:

Month to which the deferred tax relates	Amount Rs.	Due Date	Date of Payment	Delay No. of days	Interest leviable U/s.24(3)
April' 99	5,43,444-	20.05.99	19.02.00	275	99,631-
May' 99	20,447- 5,29,561-	20.06.99	19.02.00 20.03.00	244 273	3,326- 96,380-
June'99	6,937- 5,06,573-	20.07.99	20.03.00 31.12.03	243 1290	1,124- 4,35,653-
July'99	5,49,057-	20.08.99	31.01.03	1259	4,60,842-
Aug'99	3,44,576-	20.09.99	31.01.03	1228	2,82,093-
				Total:	13,79,049-

7. Thus tax relating to the months of April to August, 1999 have been repaid in 2000, 2002 and 2003, even prior to the scheduled date of repayments. The provisions of Section 17A(2), extracted above, stand attracted in this case. The Scheme does not envisage anywhere that a reduction in the tenure of deferral availed by the petitioner would

constitute a breach thereof. Thus and accordingly, the deferral granted has not been cancelled till date. In this case, the benefit of complete deferral has not been availed by the petitioner which, in my considered view, does not militate against the benefit claimed. Had the Department been of the view that the petitioner is disentitled to the scheme granted, an order of cancellation should have been passed, which has not been done. Thus the legal presumption is to the effect that the eligibility of the petitioner to the Scheme of deferral continues until cancelled. The fact that the petitioner has remitted the amounts of tax in advance also does not lead to any inference adverse to the petitioner. Thus, even in a case where only part of the benefit extended by the Scheme has been availed, no interest will be chargeable in terms of Section 17A.

8. The impugned proceedings are quashed and the writ petitions allowed, in the above terms. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Assistant Commissioner (CT) (FAC)
Fast Tract Assessment Circle II,
Coimbatore.

2.The State Industries Promotion
Corporation of Tamil Nadu.,
19-A Rukmani Lakshmipathy Road,
Chennai-600008

+1 cc to M/s.N.Inbarajan,Advocate Sr.No. 79904
+1 cc to The Government Pleader Sr.No. 80348

AKM/03.12.19/4P-5C /

W.P.No.31819 & 31820 of 2006