

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.02.2019

Pronounced on : 13.06.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.38371 of 2003

and

WMP.No.38371 of 2003

Tube Investments of India Ltd.,
72, Rajaji Salai,
Chennai-600 001
now at "Dare House",
234, N.S.C. Bose Road,
Chennai-600 001. ... Petitioner

Vs.

- 1.The Assistant Commissioner (CT),
Fast Track Assessment Circle-I,
Chennai-600 006.
- 2.State Industries Promotion
Corporation of Tamil Nadu Ltd.,
No.19A, Rukmani Lakshmipathy Road,
Egmore, Chennai-600 008.
- 3.The Principal Commissioner and
Commissioner of Commercial Taxes,
Department of Commercial Taxes,
Government of Tamil Nadu,
Ezhilagam, Chepauk,
Chennai-600 005. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records of the first respondent herein in CST No.42/2000-2001 dated 02.12.2003 demanding interest for taxes paid under protest and to direct him to quash the same insofar as relating to demand of interest.

For Petitioner : Mr.K.A.Parthasarathy
for Mr.N.Inbarajan

For Respondent : Mr.M.Hariharan, AGP
Nos.1 & 3

For Respondent-2: Mr.Ramesh Venkatachalapathy
SC for SIPCOT

O R D E R

The order under challenge in the present Writ Petition is to levy of interest under Section 9(2A) r/w. 24(3) of the Tamil Nadu General Sales Tax Act, 1959 for delayed remittance of tax.

2. Heard Mr.K.A.Parthasarathy, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader appearing on behalf of the respondents 1 and 3.

3. According to the respondents, the petitioner had wrongly availed the Interest Free Sales Tax (IFST) deferral benefit for the sales of wide width steel strips from April 2000 to August 2000 before reaching the bench mark. According to the petitioner, the penal interest can be demanded only if there is an admission of liability or omission to pay the admitted tax after the demand is raised. Since the petitioner had not admitted the liability and had paid the tax demanded only after the demand has been made, no penal interest can be demanded. The learned counsel also submitted that Unit-II of the petitioner is only a diversification unit manufacturing a different product and therefore, the petitioner is entitled to enjoy the IFST deferral benefit on the sales of Unit-II from 01.04.2000 onwards and as such, the impugned order itself is illegal.

4. Per contra, the learned Additional Government Pleader submitted that the petitioner was eligible for the deferral scheme only if the sales tax was on the increased volume of production of sales over and above Rs.82.16 Crores. Since the petitioner had wrongly availed the deferral scheme from April 2000 to August 2000, without reaching the bench mark, the levy of interest has been properly made and there is no infirmity also in levying tax between the months from April 2000 to August 2000.

5. The petitioner had filed monthly returns for the months of April to August 2000, reporting their total and taxable turnover and their tax due thereon, the extent of deferral available and the reasons for their entitlement of deferral. It is the clear stand of the petitioner that their returns were

wholly correct. Even if the first respondent proceeded to hold that the returns were incorrect, there was a need to make an assessment and then to make a demand of tax. The first respondent has also done so in the impugned proceedings for the months of April 2000 to August 2000. The petitioner had also made the payment of tax under protest, within a period of 30 days of receipt of the demanded tax. As such, penal interest could not have been imposed. The Hon'ble Apex Court in a decision in E.I.D. Parry (India) Ltd., V. Assistant Commissioner of Commercial Taxes, Chennai and another appeal reported in 141 Sales Tax Cases 12 had settled this proposition with the following observations :

"12. To consider this aspect, one needs to look at Section 13, which has been set out herein above. It is to be seen that under Section 13(2) tax could be paid in advance on the basis of monthly returns. A plain reading of Section 13(2) shows that the tax which has to be paid on the basis of such returns. If, as now contended by Mr. Iyer, the returns are incomplete or incorrect then, under Section 13 (3), the Assessing Authority must, after giving a reasonable opportunity to the assessee, determine what was the tax payable and issue a notice to pay the tax within a particular period. The determination and collection under Section 13 would then be subject to such adjustments as may be prescribed on completion of the final assessment.

13. ... Under Section 24(1) if the tax has been assessed or has become payable under the Act, then the payment has to be made within the said time as may be specified in the notice of assessment and tax under Section 13(2) has to be paid without any notice of demand. However, as seen above, the tax under Section 13(2), in the absence of any determination by the Assessing Authority, is tax as per the returns. If default is made in payment of such tax then interest becomes payable under the Act. In the present case, it is an admitted position that tax as per the monthly return had been paid within time. It is also an admitted position that there was no assessment, even provisional, by the Assessing Authority prior to the final assessment made after the revised returns had been filed. Interest becomes payable under Section 24(3) on an amount remaining unpaid after the date specified for its payment under sub- section (1) of Section 24. As seen above

sub-section (1) of Section 24 deals with an assessed tax or tax which has become payable under the Act. In cases covered by Section 13 (2) tax must be paid without any notice of demand. But as stated above, under Section 13 (2) tax is to be paid "on the basis of such returns". Tax as per the returns has admittedly been paid. If the returns were incomplete or incorrect as now claimed the assessing authority had to determine the tax payable and issue a notice of demand. In the absence of any assessment, even provisional, and a notice of demand no interest would be payable under Section 24(3). In this case, it is an admitted position that as soon as the revised return was filed the Appellants paid the tax as per the revised return. Therefore they paid the tax even before the final assessment took place. Thus the claim for interest, under Section 24 (3) from the date that the advances were paid to the sugarcane growers is not sustainable. There is no provision under the Act which permits charging of interest unless and until there has been a provisional assessment and a notice of demand prescribing the period within which the tax was to be paid."

6. The learned Additional Government Pleader had placed reliance on a decision of this Court in W.P.No.15625 of 2009 etc., [M/s.Jagadeeswaran Textiles Private Limited, rep. by its Managing Director P.Govindasamy, Kottamangalam Road, Thungavi (PO), Udumalpet Taluk, Coimbatore District V. The Commercial Tax Officer, Udumalpet (North), Udumalpet, Coimbatore District] and attempted to substantiate the impugned order. The facts involved in the case of Jagadeeswaran Textiles (supra), may not be applicable to the instant case. While analysing the second proviso to Section 24(3) of the TNGST Act, the Court had held that the proviso enables postponement of payment of only the disputed tax and the petitioner ought to have paid at least the tax on the turnover, which is not in dispute. In the said case, the petitioner had not paid the tax even on the admitted turn over and therefore, the petitioner cannot take refuge under the Theory of Merger and contend that the original order of assessment stood erased. As such, the said decision may not be applicable to the petitioner's case.

7. In view of the decision of the Hon'ble Apex Court in E.D. Parry's case (supra), the levy of interest between the month of April to August 2000, cannot be justifiable or sustainable.

8. Accordingly, the impugned order in CST No.42/2000-2001 dated 02.12.2003 passed by the first respondent insofar as it relates to demand of interest is hereby quashed. The Writ Petition stands allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

- 1.The Assistant Commissioner (CT),
Fast Track Assessment Circle-I,
Chennai-600 006.
- 2.State Industries Promotion
Corporation of Tamil Nadu Ltd.,
No.19A, Rukmani Lakshmipathy Road,
Egmore, Chennai-600 008.
- 3.The Principal Commissioner and
Commissioner of Commercial Taxes,
Department of Commercial Taxes,
Government of Tamil Nadu,
Ezhilagam, Chempauk,
Chennai-600 005.

+1cc to Mr.N.Inbarajan, Advocate Sr.48321
+1cc to Mr.Ramesh Venkatachalapathy, Advocate Sr.48927
+1cc to the Special Government Pleader Sr.49030

W.P.No.38371 of 2003
and
WMP.No.46580 of 2003

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srg 01/07/2019