IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2019

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

W.P.Nos.19206 to 19208 of 2009
and
M.P.Nos.1,1,1,2,2 and 2 of 2009

M/s.Millennium Motors,
(A Unit of DRS Industries)
Rep by its Managing Director-D.Shivakumar,
SF 581/1, Gold Wins,
Civil Aerodrome Post,
Chinniyampalayam.
Coimbatore. ... Petitioner in all the WPs

Vs.

The Assistant Commissioner (CT)(FAC),
Peelamedu North Circle,
Coimbatore. ... Respondent in all the WPs

Common Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the impugned proceedings of the Respondent in TNGST 2121521/2002-03, TNGST 2121521/2003-04 and TNGST 2121521/2004-05 dated 11.09.2009 respectively, quash the same as illegal and in violation of section 2(1)(aaa) of the Tamil Nadu Additional Sales Tax Act, 1970.

(In all the WPs)
For Petitioner : Mr.S.Rajasekar

For Respondent : Mr.V.Haribabu
Additional Government Pleader (Tax)

COMMON ORDER

The petitioner challenges proceedings dated 11.09.2009 for the periods 2002-2003, 2003-2004 and 2004-2005 levying interest under Section 2(1)(aaa) of the Tamil Nadu Additional Sales Tax Act, 1970 being interest on additional tax or penalty in terms of the Additional Sales Tax Act (in short Act). Section 2(1)(aaa) reads as follows:

> Section 2(1)(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.

(Inserted by Amendment act 14 of 2005 deemed to have been effective from 01st April 1970)

2.The writ petitions can be allowed on the following short points:

The relevant and offending portion of order dated 11.09.2009 for the period 2002-2003 is extracted below for clarity:

Month & Year	Return due & date	Additional Sales tax due	Additional Sales Tax paid	Pay-ment date	Num-ber of days dela-yed	Interest u/s 2(1)(aaa) in Rs.
Apr-02	20.5.02	Rs.200219	Rs.185639- adjusted from entry tax April 02 Rs.6516- adjusted from Entry tax May 02	20.6.02	31 days	135
May-02	20.6.02	Rs.345693	Rs.345693 adjusted from Entry tax May 07 excess Rs.6516 adjusted from April 07			
Jun-02	20.7.02	Rs.962528	Rs.774219 adjusted from Entry Tax June 02 Rs.171352 adjusted from Entry tax Aug 02 Rs.16957-	20.9.02	62 days	7083
Jul-02	20.8.02	Rs.563230	Rs.563230- adjusted from entry tax paid on Sep 02 Rs.1068690-	21.10.02	62 days	23280
Aug-02	20.9.02	Rs.838890-	Rs.505460- Adjusted from Entry tax paid on Sep 02 Rs.96247 - adjusted from Entry tax paid on Oct 02 Rs.237183- adjusted from entry Tax paid on Nov 02 out of Rs.812028	21.10.02 23.11.02 10.1.03	31 days 64 days 92 days	10446 2182 14547

Month & Year	Return due & date	Additional Sales tax due	Additional Sales Tax paid	Pay-ment date	Number of days dela-yed	Interest u/s 2(1) (aaa) in Rs.
Sep-02	20.10.02	Rs.920314	Rs.574845- adjusted from entry tax paid on Nov 02 Rs.24399- adjusted from Entry tax paid on Dec 02 Rs.321070- out of Rs. 1961913 paid on 24.2.02	10.1.03 31.1.03 24.2.03	82 days 103 days 127 days	31425 1675 27184
Oct-02	20.11.02	Rs.411684	Rs.411684- out of Rs.1961913- paid 24.2.03	24.2.03	96 days	26348
Nov-02	20.12.02	Rs.388452	Rs.388452- out of Rs.1961913- paid on 24.2.03	24.2.03	66 days	17092
Dec-02	20.1.03	Rs.417723-	Rs.417723- out of Rs.961913 paid on 24.2.03	24.2.03	35 days	9747
Jan-03	20.2.03	Rs.842929-	Rs.28448- out of Rs.1264728- Rs.391497- Rs.422984 adjusted from 1961913-	9.5.03 9.5.03 24.2.03	78 days 4 days	21837 1128
Feb-03	20.3.03	Rs.421798	Rs.421798- out of Rs.1264728-	9.5.03	50 days	14060
Mar-03	20.4.03	Rs.553380-	Rs.553380- out of Rs.1264728-	9.5.03	19 days	7099
					Total	215178

3.The petitioner in this case, has admittedly, not remitted any payments of additional sales tax. The returns of Entry Tax and Sales Tax have been filed within the due dates prescribed. Excess of Entry Tax paid as per regular monthly returns is available with the Department. The payment or otherwise of additional sales tax would become necessary only if the turnover of the petitioner is excess of Rs.10 crores, which position the assessee will ascertain for a fact, only at the end of the relevant financial year.

4.The Assessing Authority has proceed suo motu, to adjust the additional sales tax due from the excess entry tax available. This is clear from a perusal of the entries extracted above. For example in regard to the month of April 2002, Returns of sales and entry tax were filed on 20.05.2002. The additional sales tax payable is a sum of Rs.2,00,219/-. The aforesaid amount has been adjusted on 20.06.2002 as against Rs.1,85,639/- (excess entry tax for April 2002) and Rs.6,516 (excess entry tax paid for May 2002). The officer arrives at a delay of 31 days between the period 20.05.2002, being the date on which return should be filed and date of adjustment which is 20.06.2002. The scenario is identical in respect of all the months in question. Thus, in all cases, amounts in excess of the entry tax were well available with the Department. In such a situation, there is no delay in remittance of additional sales tax, as the officer could, and ought to have effected adjustment of the additional tax due against excess entry tax immediately upon completion of the year. Thus, there is no question of any liability to interest as well.

5.A Division Bench of this Court in the case of M/s.Kone Elevator India Pvt. Ltd., 30, III Street, Abhiramapuram, Chennai-18 vs. The Commercial Tax Officer, Mandaveli Assessment Circle (W.A.No.306 of 2008 order dated 24.07.2009) at paragraph No.6 has stated that unless an order of assessment has been passed quantifying a demand of tax, no penal interest is liable to be levied. In the present case, there is no admittedly, order of assessment passed as far as additional sales tax is concerned. On the basis of the aforesaid reasoning, these writ petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT)(FAC),
Peelamedu North Circle,
Coimbatore.

+1cc to Mr.Mr.S.Rajasekar, Advocate Sr.77044 [20/01/2020]
+1cc to the Special Government Pleader Sr.77344[20/01/2020]

W.P.Nos.19206 to 19208 of 2009
and
M.P.Nos.1,1,1,2,2 and 2 of 2009

Mg[CO]
srg 03/12/2019