IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 11.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.29969 and 29970 of 2005
and
W.P.M.P.Nos.32854 and 32856 of 2005

Sree Lakshmi Steels Re-rolling Mill
88, Bazaar Street,
Kallakurichi ... Petitioner in both W.Ps

Vs

1. The Joint Commissioner of Commercial Taxes,
   (Revision Petition)
   Chepauk,
   Chennai 600 005

2. Deputy Commercial Tax Officer,
   Kallakurichi 606 202 ... Respondents in both W.Ps

PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus and call for the records of the first respondent in R.P.Nos.JJ1/72/05 and JJ1/73/05 and quash the orders dated 07.06.2005, and further direct the respondents not to levy interest on the petitioner in respect of the deferral amount.

For Petitioner in both W.Ps. : Mr.Arun Kurian Joseph

For Respondents in both W.Ps. : Mr.Mohammed Shaffiq Spl. Govt. Pleader for R1 & R2

COMMON ORDER

The petitioner herein was sanctioned the benefit under the Interest Free Sales Tax deferral scheme for nine years, but they availed the said benefit for a period of two years only and thereafter stopped their production. When they had approached the Commissioner of Commercial Taxes, Chennai for the payment of tax dues in installments, the request was not accepted and ultimately they had filed the Writ Petition before this Court in W.P.No.34345 of 2002, in which, this Court by an order dated

03.10.2002 permitted the petitioner to pay the entire arrears within a period of nine months from the date of receipt of a copy of the order.

2. It is stated that the petitioner had thereafter paid the entire tax dues within a period of nine months prescribed by the High Court. Subsequently, on 05.02.2004, the second respondent had claimed an interest on the belated payment of tax under Section 24(3) of the TNGST Act 1959. The challenge to the levy of interest was confirmed by the first respondent herein by the orders under challenge in the present Writ Petitions.

3. It is the contention of the learned counsel for the petitioner that as per the deferral agreement entered into between the petitioner and the Assistant Commissioner of Commercial Taxes, there is no provision for levy of interest and since the High Court had not directed the petitioner to pay the interest, the levy of interest itself is unsustainable.

4. The learned Special Government Pleader, however, would object to said submission and contend that Section 24(3) of the TNGST Act 1959, enables the respondents to claim interest on belated payments and as such there was no irregularity in the impugned orders passed by the first respondent.

5. It is not in dispute that pursuant to the order of this Court in W.P.No. 34345 of 2002 dated 03.10.2002, the petitioner paid the entire arrears of tax within the stipulated period of nine months. What is now sought for by the respondents is the interest on belated payments. The first respondent in the impugned order had stated that the order of the High Court does not speak anything about the waiver of interest due under Section 24(3) of the Act. The petitioner would rely upon a decision of this Court reported in (2012) 50 VST 410 (Mad) in the case of T.Subramanian vs. Deputy Commercial Tax Officer, Ettayapuram, wherein, it was held that where a Court of law had permitted payment of tax liability in installments, the claim/demand for interest on belated payment is not warranted. The relevant portion of this Order is as follows:

> "Therefore, this court is of the considered view that in a case where the court of law has permitted the petitioner to pay the tax liability due amount in instalments, then, the claim/levy of interest by the respondent as per demand notice dated August 31, 2005 for the period 1998-99 amounting to a sum of Rs.1,41,882/- is not warranted in view of the peculiar facts and circumstances of the present case which float on the surface.

> To put it differently, when this court has permitted the petitioner in W.P.(MD).No.787 of 2004 to pay the tax liability amounts in instalments as per the final order dated August 27, 2004 (S.Manikandamariappan V. Deputy Commercial Tax Officer, Ettayapuram, Tuticorin District) by exercising its judicial discretion then, the invocation of Section 24 (3) of the Act for levying of interest for the payment made in instalments as per the order of this Court, is not a justifiable, valid and prudent one, in the considered opinion of this Court.
>
> Hence, this Court is perforced to interfere with the order passed by the respondent/Deputy Commercial Tax Officer, Ettayapuram, Tuticorin District, dated August 31, 2005 and since the same is not in order and a valid one in the eye of law, this Court sets aside the same to promote substantial cause of justice. Viewed in that perspective, the writ petition is allowed."

6. The aforesaid extract makes it clear that when the court of law permits the assessee to make payment of tax liability in installments, the respondents should defer from claiming any interest on the same. Considering the fact that the petitioner industry has been closed down and the assets of the industry have been attached by the Debts Recovery Tribunal, this Court by order dated 03.10.2002 passed in W.P.No.34345 of 2002 permitted the petitioner to pay the tax liability in nine installments. Admittedly the said tax liability has been paid as per the order of this Court. In such view of matter, more particularly in the light of the decision of this Court in the case of T.Subramanian (supra), this Court is inclined to take a sympathetic view and quash the demand for interest on belated payments. It is made clear that this order is pronounced on the basis of the facts of this case and shall not be treated as a precedent in any other similar case.

7. In view of the above, the Writ Petitions are allowed and the impugned orders are quashed. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vkr

To

1. The Joint Commissioner of Commercial Taxes,
   (Revision Petition)
   Chepauk,
   Chennai 600 005

2. Deputy Commercial Tax Officer,
   Kallakurichi 606 202

+1 cc to M/s.Arun Kurian Joseph, Advocate, S.R.No.59035

+1 cc to the Spl. Government Pleader(Taxes), S.R.No.59370

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and
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GP(CO)
SSM(16/09/2019)