IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2019

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.25368 of 2011
and M.P.No.1 of 2011

M/s.A.R.S.Metals (P) Limited,
Now A.R.S.Metals Ltd,
Represented by its Deputy Director,
D-109, II Floor,
LBR Complex, Anna Nagar East,
Chennai- 600 102
...Petitioner

Vs

1.The Additional Commissioner (Revision Petition),
Office of the Principal Secretary/
Commissioner of Commercial Taxes,
Chennai.

2. The Deputy Commissioner (CT),
Now re designated as Joint Commissioner (CT)
Chennai (South) Division,
PAPJM Building, Greams Road,
Chennai- 600 006.

3. The Commercial Tax Officer,
Now re designated as Assistant Commissioner (CT)
Koyembedu Asst Circle,
Chennai.
... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ or order of direction or any other Writ in the nature Writ of Certiorari to call for the records of the First respondent in Revision Petition:J1/RP/15/2008 and to quash the impugned order dated 30.05.2011.

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For Petitioner : Mr.P.Rajkumar
For Respondents : Mr.V.Hari Babu
Additional Government Pleader

ORDER

The Petitioner challenges an order of the Additional Commissioner(Revision) dated 30.05.2011, setting aside the order of the assessing authority imposing interest under Section 24 (3) of the Tamil Nadu General Sales Tax Act 1959 (in short 'Act') and remanding the matter to the file of the assessing authority to compute the correct number of days of delay and re-work quantum of penalty to be imposed upon the petitioner.

2.The petitioner was granted the benefit of deferral in respect of two of its units. In respect of Unit-I, tax for the period 01.06.1993 to 31.05.2002 was deferred to between 01.06.2002 to 31.05.2011 and, in respect of Unit II, tax for the period from 01.12.1994 to 30.11.2003 was deferred to 01.11.2003 to 30.11.2012. Due to certain unforeseen reasons, the petitioner stopped production in December 1998. According to the respondent, the stoppage of production and non-filing of returns for more than one year rendered the petitioner ineligible to avail interest free sales tax loan as per agreement. Vide communication dated 09.08.2000, the petitioner was put to notice that it was ineligible for the loan sanctioned under the IFST Scheme and called upon to pay a sum of Rs.1,02,22,294/-(Rupees one crore two lakhs twenty two thousand three hundred and ninety four), within a period of fifteen days from date of receipt of the notice. The deferral agreement was foreclosed as on 09.08.2000 in terms of clause 9 of the Agreement that reads thus:

> '9. The party of the second part shall keep the normal production during the period of IFST as stipulated in the Eligibility Certificate. If the unit availing the loan stopped normal production for a period exceeding six continuous months except in condition of force major the entire outstanding loan will become recoverable in one lumpsum. The concerned Assessing Officers shall be permitted to keep a close watch over the performance of the Industry and foreclose the scheme and enforce the recovery of the tax assessed for all the years covered by the scheme, if the monthly return or check of accounts during

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assessment or otherwise show that the industry has stopped production in excess of permitted permitted.'

3. Thereafter, the petitioner filed a petition before the Commissioner of Commercial Taxes requesting permission to adhere to the repayment schedule, expressing its intention to restart business within nine months from the date of the petition. The request of the petitioner was rejected by the Commissioner of Commercial Taxes vide order dated 06.12.2000. The petitioner admittedly remitted the entire amount of taxes on various dates between 26.09.2000 and 16.04.2001.

4. Thereafter, the original authority vide proceedings dated 20.11.2002, calculated the interest payable in terms of Section 24(3) of the Act from 27.12.1998 till date of repayment. The said order was challenged before the revisional authority who, vide order dated 30.05.2011, set aside the order of the Assessing authority as well as the Deputy Commissioner (CT), Chennai (South) finding that the petitioner was not liable to pay interest fromthe date of stoppage of normal production but only for the delay occasioned after issuance of notice upon it. The matter stood remanded to the assessing authority to compute the correct period and to re-work the quantum of penalty to be imposed upon the petitioner. This order is assailed on the ground that no interest ought to be levied at all, since the entire amount has been remitted between 26.09.2000 and 16.04.2001 which is even prior to the due date of remittance as per the IFST Schedule.

5. This argument needs to be rejected straightaway for the following reasons. The petitioner cannot avail benefit of, and under, a deferral scheme that is no longer operative in its case, as it stands foreclosed in line with Clause 9 of the Agreement extracted earlier, and by issue of notice dated 09.08.2000.

6. Reliance is placed by the petitioner on the decision of a Division Bench of this Court in the case of M/s.Amudha Mills Private Limited Vs. Assistant Commissioner (CT) (W.A.No.1482 of 2006 dated 06.12.2006), wherein the Division Bench holds that the appropriate period for imposition of penal interest would be from the due date for repayment of loan and not from the date on which the IFST deferral loan was availed.

7. The relevant portion of the order of the Division Bench in the case of Amudha Mills (supra) is extracted as below:

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"6.In order to give quietus to this matter, it is more relevant to extract the order of the First Bench of this Court in W.A.No.1482 of 2006 dated 06.12.2006.

"..... 2.The learned counsel appearing for the appellant/petitioner submitted that as per the terms of the deferral agreement, in the event of default in the repayment of the IFST deferral loan, the loan can be recoverable along with the interest at 24% per annum calculated from the due date for repayment of loan. Therefore, the penal interest, if any, should be calculated only from the due date for repayment of the loan and not from the date on which the IFST deferral loan was availed. He submitted that the issue has already been settled by the Tamil Nadu Taxation Special Tribunal in O.P.Nos.65 to 68 of 1998. The decision of the Special Tribunal has been accepted by the Commercial Taxes Department. This position is not disputed by the learned Special Government Pleader but he submitted that since the appellant/petitioner stopped the production in 2002, they are liable to pay the penal interest from November, 2002 in terms of circular of the Commercial Taxes and Religious Endowments Department dated 18.03.1994. However, a perusal of the said circular shows that this was only in the form of recommendation and this terms has not been specifically incorporated in the agreement. In the circumstances, we are of the view that the appellant/petitioner shall be liable to pay penal interest only with effect from June, 2003. This writ petition is disposed of accordingly....."

7.The order made in W.A.No.1482 of 2006 dated 06.12.2006 still governs the field. Following the said order, subsequently, W.P.No.19060 of 2009 came to be allowed on 01.12.2010. Therefore, the order impugned in these writ petitions stand set aside and the Department is directed to collect the penal

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> interest only from the date on which the agreement was cancelled and not from the date of returns filed by the petitioner firm.
>
> In the result, these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

8. The deferral agreement in that case was cancelled, whereas in the present case it stands foreclosed.

9. The petitioner also relies on a decision of a learned single Judge in the case of Sri Krishna Smelters Ltd. V. The Joint Commissioner and another (W.P.Nos.23956 to 23958 of 2017 dated 06.09.2017), where also, the question considered was whether the demand of interest should run from date of repayment of loan or the date of returns filed by the petitioner. After discussing the decision of the Division Bench in the case of Amudha Mills (supra), at paragraph 10, the learned single Judge concludes in line with the decision of the Division Bench that the liability to pay penal interest would run only from date on which repayment is due and not the date on which return has been filed.

10. The petitioner also relies on a decision rendered by me in the case of Indo Shell Mould Ltd. V. The Assistant Commissioner (CT) and another (W.P.No.31819 of 2006 dated 17.09.2019), wherein the facts are distinguishable. Though the petitioner in that case had availed of deferral only for five months out of the entire period of deferral, interest was sought to be levied under Section 24(3). However, the scheme of deferral had not been cancelled in that petitioners' case. Thus, on the factual premise that the scheme continued, though the petitioner had not availed the same for a substantial portion of the scheme, I had set aside the levy of interest noting at paragraph 4 that it was undisputed that the petitioner was entitled to and covered by the deferral scheme though it had not availed the benefit of the same for a substantial portion of the scheme.

11. In the present case, the Scheme has admittedly been foreclosed by communication dated 09.08.2000 and the umbrella of promotion has thus been removed. The petitioner thus falls under the category of a regular assessee and not one protected by a scheme of deferral. The respondent relies on a judgment of the Supreme Court in the case Southern Agrifurane Industries Ltd. V. Commercial Tax Officer and Others ((2005) 140 STC 1) deciding the question as to liability to remit interest on the balance of sales tax dues in the case of an undertaking that was declared sick under the provisions of the Sick Industries

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Companies (Special Provisions) Act, 1985. The provisions of Section 17A of the erstwhile Tamil Nadu General Sales Tax Act, 1959 confer power on the State to notify deferment of tax for certain industries including sick industries. Sub-section (2) thereof states that interest would not be liable to be paid on the deferred tax except upon satisfaction of certain conditions.

12. The case of the petitioner in that case was that the deferment granted was without limit and a challenge was laid to a Notification issued by the Sales Tax Department, retrospectively imposing a ceiling on the amount of sales tax that might be deferred. The High Court rejected the prayer holding that since, even originally the deferment granted was not unlimited, the subsequent Notification only clarified this position. The stand of the assessee was rejected confirming the ceiling imposed on the tax deferred.

13. The decision of the High Court was confirmed by the Supreme Court, that at paragraph 25 states in the context of a sick undertaking, that deferral was required only to the extent to which it was necessary to take an entity out of the ambit of 'sickness' or to rehabilitate the same. Anything in excess of such rehabilitation would not be covered by Section 17A under which the deferral had been granted but would fall within the ambit of Section 24(3) of the Act that provides for payment of interest.

14. A three Judge Bench of the Supreme Court in the case of E.I.D Parry (India) Ltd. V. Assistant Commissioner of Commercial Taxes, Chennai (and another appeal) ((2005) 141 STC 12) considered the circumstances under which interest under Section 24(3) can be imposed stating that it is only when an assessment, either provisional or final, had been made and notice of demand issued, that the levy of interest would stand triggered.

15. In the present case, there is no dispute as either to the liability or quantification of the tax itself. This is borne out by the position that the petitioner has, pursuant to demand dated 09.08.2000, remitted the tax on various dates between 26.09.2000 and 16.04.2001.

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16. In view of the above discussion, I am of the view that there is no infirmity in the impugned order and confirm the same. This Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

arr/sl

To
1.The Additional Commissioner (Revision Petition),
Office of the Principal Secretary/
Commissioner of Commercial Taxes,
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3. The Commercial Tax Officer,
Now re designated as Assistant Commissioner (CT)
Koyembedu Asst Circle,
Chennai.
+1 c to the Government Pleader (tax) sr99046
+1 cc to Mr.P.Rajkumar advocate sr98379

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