IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2019

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.3272 of 2010
and M.P. No.2 of 2010

M/s.Sugaveneswara Spinning Mills (P) Limited
Represented by its Joint Managing Director,
V.Chandrasekaran, Belur Main Road,
Selliampalayam, Minnampalli,
Salem - 636 016. ...Petitioner

Vs

1.The Assistant Commissioner (CT)
Salem Rural Assessment Circle,
Salem.
2.The Joint Commissioner of Commercial Taxes,
Salem Division, Salem. ... 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 on the files of the 1st respondent in TNGST.2700599/2005-06 dated 31.07.2009 and quash the same as being contrary to the principle laid down by the Honourable Supreme Court of India in the judgment reported in 141 STC 12 (E.I.D. Parry (India) Ltd., Vs. Assistant Commissioner of Commercial Taxes, Chennai) and that of the judgment of this Honourable Court in W.A. No.306/2008 dated 24.07.2009 (M/s.Kone Elevator India (P) Ltd., Vs. The Commercial Tax Officer, Mandaveli Assessment Circle, Chennai).

For Petitioner : Mr.R.Senniappan

For Respondents : Mr.Mohammed Shaffiq,
Special Government Pleader (Tax)

ORDER

The petitioner challenges an order of assessment for the period 2005-2006 dated 31.07.2009, passed in terms of the Tamil Nadu General Sales Tax Act, 1959 (in short 'Act').

2. The order is challenged on the ground that in a case where the original proceedings, in this case dated 06.03.2007, had not proposed the levy of tax or penalty, there could be no subsequent levy of additional sales tax vide a separate proceeding.

3. Mr.Mohammed Shaffiq, leaned Special Government Pleader for the Revenue fairly states that the issue in question is covered by a decision of the Division Bench of this Court in the case of M/s.Kone Elevator India (P) Ltd., Vs. The Commercial Tax Officer, Mandaveli Assessment Circle, Chennai [(2010) 27 VST 577 (Mad)]. The operative portion of the decision of the Division Bench is extracted below:

> '6.For the purpose of this case it is sufficient if we consider one ground raised on behalf of the appellant and that is, that unless there was an assessment order and the tax had remained unpaid, there can be no penal interest.
>
> 7.Section 2(aa) of the Tamil Nadu Additional Sales Tax Act, 1970 reads as follows :
>
> "2. Amendment of Section 2.- In Section 2 of the Tamil Nadu Additional Sales Tax Act, 1970 (Tamil Nadu Act 14 of 1970) (hereinafter referred to as the principal Act), in sub-section (1),-
> (1) after Clause (aa), the following Clause shall be inserted, namely:-
> "(aaa) On payment 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."
> (2) for clause (b), the following clause shall be substituted, namely:-
> "(b) The provisions of the said Act shall apply in relation to the additional tax payable under clause (aa) and the interest payable under clause (aaa) as they apply in relation to the tax and interest payable under the said Act."
>
> 8.The interest is payable if any additional tax or penalty imposed by the assessing authority remains unpaid. The word used is “imposed by he assessing authority”. In this case, the relevant portion of the assessment order reads as follows:

	Tax	S.C. at 5%	AST at 1%
Tax due	Rs.58,07,733	1,72,102	10,59,632
Tax paid	Rs.58,07,733	1,72,102	10,59,632
Balance	Nil	Nil	Nil

9. Therefore, as per the assessment order nothing remained unpaid on that date, so no additional tax was imposed by the assessing authority. Therefore, we do not see how interest can be demanded. On this ground alone the impugned order deserves to be quashed and the writ appeal is allowed.'

4. Applying the rationale of the aforesaid decision to the facts and circumstances of the case, this Writ petition is allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Assistant Commissioner (CT)
Salem Rural Assessment Circle,
Salem.

2.The Joint Commissioner of Commercial Taxes,
Salem Division, Salem.

+1 cc to M/s.R.Senniappan,Advocate Sr.No. 78344
+1 cc to The Special Government Pleader Sr.No.78982

AKM/16.10.19/3P-5C /

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