

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 26.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.32980 of 2005
and
W.M.P.No.35936 of 2005

M/s.Sulochana Cotton Spinning
Mills (P) Ltd.,
424-426, Kamaraj Road,
Tirupur - 641604.Petitioner

Vs

The Commercial Tax Officer,
Tirupur (South),
Tirupur.Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in Assessment No.2320908/02-03, Penalty Register No.4/05-06 and quash the proceedings dated 31.08.2005 issued therein and further direct the respondent to issue notice and give the petitioner an opportunity for filing of objections in respect of levy of penal interest on the petitioner.

For Petitioner : Mr.K.J.Chandran

For Respondent : Mr.M.Hariharan, AGP

O R D E R

The order under challenge in the present writ petition is to the levy of interest, wherein the petitioner has raised a ground that Section 24(3) of the Tamil Nadu General Sales Tax Act, 1959, provides for levy of interest only on any amounts being remained unpaid after the due date and the petitioner has sought for adjustment of the returns as against the amount lying in excess with the respondents.

2. According to the learned counsel for the petitioner, Section 24(3) of the Act would be applicable only when the tax is payable as per the monthly returns or when the tax is not paid within the stipulated time in the assessment order. In the instant case, the petitioner had earlier made a request on 20.09.2002, to have the adjustment made as against the excess amount lying in the Department, which has not been considered when the impugned order has been passed.

3. In a decision of the Full Bench of the Hon'ble Supreme Court reported in CDJ 2005 SC 475 in the case of E.I.D.Parry (India) Ltd. Vs. Assistant Commissioner of Commercial Taxes, Chennai, it has been held that the claim for interest under Section 24(3) from the date when the advances were paid to the sugarcane growers, in that case, was not sustainable. As per the decision of the Full Bench, 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.

4. Even though the demand has been made in the present case, the fact remains that the interest has not been charged on the ground that the tax was not paid as per the monthly returns or that tax was paid within the stipulated time in the assessment order. In my view, there was no mala fide intention on the part of the petitioner, when he sought for adjustment of the payment of tax from the excess amount available with the Department. In these circumstances, the respondent ought to have considered the petitioner's request to have the adjustment made. In these circumstances, the levy of interest could only be termed an arbitrary exercise of power.

5. In the light of the above observations as well as by taking note of the decision of the Full Bench referred above, I am of the view that the present demand notice of penalty cannot be sustained. Accordingly, the impugned proceedings of the respondent in Assessment No.2320908/02-03, Penalty Register No.4/05-06, dated 31.08.2005, insofar as it relates to demand of penalty is concerned, is quashed.

6. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

hvk

To

The Commercial Tax Officer,
Tirupur (South),
Tirupur.

+1cc to Mr.B.Raveendran, Advocate, S.R.No.53293
+1cc to the Government Pleader, S.R.No.53629

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and
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NMI (CO)

RRS (16/07/2019)



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