IN THE HIGH COURT OF JUDICATURE AT MADRAS
Reserved on : 29.04.2019

Pronounced on : 28.08.2019
CORAM
THE HONOURABLE MR. JUSTICE M.S.RAMESH
W.P.Nos.33192 & 33193 of 2005
and
WMP.No.36159 of 2005

TVL. K.H. Shoes Ltd.,
rep. by its Director M.Mohammed Shameem,
2, Thirunarayana Guru Road,
Choolai, Chennai-600 112.
... Petitioner in both W.Ps.

Vs.

1.The Joint Commissioner of Commercial Taxes
(Revision Petition),
Ezhilagam, Chepauk,
Chennai-5.

2.The Commercial Tax Officer,
Vepery Assessment Circle,
3, Ritherdon Avenue,
Chennai-7.
... Respondents in both W.Ps.

COMMON PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, calling for the records of the first respondent in his proceedings in R.P.No.JJ1/271/04 & R.P.No.JJ1/272/04 dated 10.05.2005 and to quash the same.

For Petitioner : Mr.S.Ramanathan
For Respondents : Mr.Mohammed Shaffiq
Special Government Pleader

C O M M O N O R D E R

In both the Writ Petitions, the orders of the first respondent passed in the revision petitions preferred by the petitioner herein are under challenge.

2. Heard Mr.S.Ramanathan, learned counsel for the petitioner and Mr.Mohammed Shaffiq, learned Special Government Pleader appearing on behalf of the respondents.

3. While the Writ Petition in W.P.No.33192 of 2005 pertains to the Assessment Year 1993-94, the petition in W.P.No.33193 of 2005 pertains to the Assessment Year 1994-95.

4. The brief facts of the case are as follows:-

a) The petitioner in both the Writ Petitions is a dealer in Hides, Skins and Shoe Uppers, who is a registered dealer under the TNGST and CST Acts and is an Assessee on the file of the second respondent herein. During these two relevant Assessment years, the petitioner had effected sales of REP licences. The petitioner was finally assessed to tax on a total and taxable turnover of Rs.1,49,61,189/- on 31.01.1995 for the Assessment Year 1993-94 and Rs.7,52,77,349/- and Rs.93,02,531/- on 29.04.1996 for the Assessment Year 1994-95. The second respondent had revised the assessment by levying tax on the premium received by the petitioner, on transfer of REP licences on 30.12.1997 for the year 1993-94 and on 25.03.1997 for the year 1994-95. The petitioner had paid the tax demanded.

b) Thereafter, on 31.03.1999, the second respondent levied interest for the period from 20.12.1993 till 17.12.1997 (date of payment of tax) for the Assessment Year 1993-94. Likewise, for the periods 06.05.1997 to 28.05.1997 and 06.05.1997 to 10.06.1997, interest was levied for the Assessment Year 1994-95.

c) As against the interest levied, revision petitions came to be filed before the Deputy Commissioner on the ground that interest would be leviable only after assessment is made and demand is raised and since the petitioner had paid the entire tax before the due dates, such interest cannot be levied.

d) The question as to whether REP licences would constitute goods, which was pending before the Hon'ble Supreme Court of India, came to be allowed on 01.05.1996 in the case of M/s.Vikas Sales Corporation reported in 102 STC 106. In this background, the Deputy Commissioner had allowed the revision petitions holding that interest was leviable only from 01.05.1996, for which purpose, reliance was placed on the decision of the West Bengal Taxation Special Tribunal reported in 112 STC 87 in the case of M/s.Shivdham Wood Products Private Limited V. Commercial Tax Officer, Bally Charge and others. The petitioner had then filed the second revision petitions before the Joint Commissioner of Commercial Tax, Chennai, which came to be rejected on 10.05.2005, which orders are impugned in the present Writ Petitions.

5. The learned counsel for the petitioner submitted that when the petitioner had reported the turnover in the returns and claimed exemption on the sales of REP licences, the levy of tax was kept pending for the Assessment Year 1993-94 and exemption was granted for the year 1994-95. Since the revision of assessment was made thereafter in the year 1997 by levying tax on the REP licence, interest cannot be levied, as the petitioner had paid the tax within the due date. In support of his contentions, the learned counsel relied upon the decisions reported in 94 STC 422 in the case of M/s.J.K. Synthesis limited V. Commercial Taxes Officer which was followed in 141 STC 12 in the case of M/s. EID Parry (India) limited V. Assistant Commissioner of Commercial Taxes, Chennai. On the strength of these decisions, the learned counsel submitted that if the tax was paid within the due date, after the revision of assessment, the interest cannot be levied. He further submitted that the petitioner cannot file the revised return after the judgment of the Hon'ble Supreme Court, since they have already reported the turnover in the returns claiming exemption and the second respondent had deferred the assessment since the matter was pending before the Hon'ble Supreme Court. Therefore, after the judgment of the Hon'ble Supreme Court, the second respondent alone has to make the revision order, which has been made belatedly.

6. The learned counsel also raised an additional ground that interest cannot be levied on the additional sales tax portion, for which a decision of this Court in the case of M/s.Karthik Roller Flour Mills V. The State of Tamil Nadu [W.P.No.6777 of 2001] was relied upon. Thus, he would submit that the interest cannot be demanded for belated payment on additional sales tax, since there is no substantial provision in the Act itself, as well as for penalty.

7. The learned Special Government Pleader, on the other hand submitted that in view of the interim orders of stay granted by the Hon'ble Supreme Court, the assessment orders were passed by keeping the levy of tax on the sales of REP licence, in abeyance. In view of the stay by the Hon'ble Supreme Court, the exemption was allowed, by retaining

their liberty to reopen, as and when the orders are received in the case before the Hon'ble Supreme Court. The learned Special Government Pleader submitted that the law on the liability to pay tax on sales of REP licences was laid, as early as on 04.04.1994, in the case of P.S. Apparels V. Deputy Commercial Tax Officer reported in 94 STC 139 and it is in view of the interim stay order of the Hon'ble Supreme Court that the Assessing Officer was restrained from proceeding further. Similar views on such liabilities was also affirmed by this Court and Karnataka High Court and other High Courts and the Hon'ble Supreme Court had ultimately, only affirmed such views. By placing reliance on the decision of the Hon'ble Supreme Court in the case of Calcutta Jute Manufacturing Company and another V. Commercial Tax Officer and others and other appeals reported in 1997 (106) STC 433 (SC), the learned Special Government Pleader submitted that the pendency of the case before the Hon'ble Supreme Court, will not disentitle the respondents from claiming interest.

8. Countering the ground of levy of interest on belated payment of additional sales tax, he submitted that in view of the amendment made to the Tamil Nadu Additional Sales Tax Amendment Act, 2005 providing for levy of interest on additional sales tax, as well as under the CST Act, the learned counsel relied on the decision of the Hon'ble Supreme Court reported in 2010 (27) VST (1) SC in the case of Indodan Industries Ltd V. State of U.P. and others. He would further distinguish the decisions relied by the petitioner in Karthik Roller Flour Mills (supra) and the case of S.Gurunathan V. The Deputy Commercial Tax Officer, Thirupathur & another in W.P.(MD) Nos.5111 & 5112 of 2009 dated 17.06.2004 stating that these decisions were prior to the Validation Act and has no bearing on the issue in hand.

9. I have given careful consideration to the submissions made by the respective counsels.

10. It is the case of the petitioner that during the course of the revision of assessment made in the year 1997, tax was levied on the sale of REP licences and thereafter since the petitioner had paid the tax within the due dates, interest cannot be levied in view of Section 24(3) of the TNGST Act. The circumstances under which the tax came to be levied in the year 1997, during the course of revision assessment orders 1993-94 & 1994-95, are as follows:

10.1. The petitioner herein had effected the sales of REP licences during the year 1993-94 and 1994-95. The Madras High Court, in P.S. Apparels' case (supra), had held that REP licences would constitute goods. The decision was rendered on 04.04.1994, following the decisions of the Karnataka High Court reported in 1992 (86) STC 170 and 1992 (86) STC 175 (Bharat Fritz Werner Ltd. v. Commissioner of Commercial Taxes) respectively.

10.2. When the Assessing Officer had issued a notice proposing to levy tax on the sales of REP licences for the aforesaid assessment years, the petitioner had raised objections through their reply, stating that they had obtained a stay from the Hon'ble Supreme Court of India, wherein the question as to whether REP licences would constitute goods, was pending.

10.3. The petitioner had also filed a Special Leave Petition before the Hon'ble Supreme Court and the Assessing Officer had deferred the assessment in respect of REP licences for the year 1993-94 and had granted exemption for the year 1994-95 by his proceedings dated 31.01.1995 and 29.04.1996 respectively.

10.4. On 01.05.1996, the case of M/s.Vikas Sales Corporation reported in 102 STC 106 was decided by the Hon'ble Supreme Court, wherein REP licences were held to be goods. In this background, the Assessing Officer had proposed to redetermine the total and taxable turnover of the petitioner by adding the premium received on the sales of REP licences, to which the petitioner did not file their objections. Ultimately, when the revised assessment was made on 30.12.1997 for the year 1993-94 and on 25.03.1997 for the year 1994-95, the petitioner had paid the tax within the stipulated time.

10.5. Thereafter, the second respondent had levied interest under Section 24(3) of the TNGST Act by calculating the interest from the period 20.12.1993, till the date of payment of the tax for the assessment year 1993-94. Likewise, interest for the year 1994-95 was levied on 22.03.2000 for the period 06.05.1997 to 28.05.1997 and 06.05.1997 to 10.06.1997.

11. The question that now arises for consideration is as to whether the petitioner is liable to pay interest when he had paid the tax within the due date in view of Section 24(3) of the TNGST Act. Before addressing this aspect, it

would be relevant to consider the decisions relied upon by the learned counsel for the petitioner.

12. In the case of M/s. J.K. Synthesis limited (supra), the Hon'ble Supreme Court had held as follows:

> It will thus be seen that under Section 11 -B before the 1979 Amendment the liability to pay interest on unpaid tax amount accrued on the dealer in two situations only, viz., (i) failure to pay the tax due under sub-sections (2) And (2-A) of Section 7and (ii) failure to pay the tax within the time allowed by the notice of demand or 30 days from the receipt of the notice by the dealer. Section 11 -B before its amendment nowhere provided for payment of interest on the unpaid tax amount as found on final assessment from the date of the filing of the return under Section 7 of the Act. If the amount of tax payable under sub-section (2) is paid on the basis of return, not on the basis of final assessment, there can be no question of payment of interest under clause (a) of Section 11 -B. Similarly, if the tax is paid according to the return as required by sub-section (2-A), in other words, if the full amount of tax due 'shown' in the return is paid, there can be no question of charging interest under clause (a) of Section 11 -B. So far as clause (b) is concerned it is a post assessment situation. Where tax is found due on final assessment and the dealer is required to make good the difference, a notice of demand will issue. If the dealer fails to pay the tax within the time specified in the notice, and if no time is specified within 30 days from the receipt of notice, he is required to pay interest at the rates prescribed by the sub-section. But if he pays the difference of tax within the prescribed time, there is no question of charging interest. If such an interpretation is not placed and if the Revenue's plea is accepted serious anomalies would

surface."

13. The learned counsel for the petitioner had also placed reliance on the decision of M/s.EID Parry (India) Limited (supra) on the following observations:-

> "The word "turnover" has been defined under Section 2(r) to mean the aggregate amount for which the goods are bought and sold. Under Section 13(2) the monthly return has to indicate the actual turnover and tax is then payable as per the return. If the return shows the actual turnover and tax is not paid as per the return, then interest would be payable under Section 24(3) as that would be a case where amount has remained unpaid after the date specified for its payment. However, if the monthly return does not indicate the actual turnover then it was for the Assessing Authority to make a demand on the footing that the return was incomplete or incorrect. In the absence of any such demand interest would not become payable under Section 24(3) as there is no provision for charging of interest prior to the date of demand. "

14. By relying on the aforesaid observations and the principles laid down, the learned counsel submitted that since the petitioner had paid the tax on REP licences within the due date after the revision of assessments, interest cannot be levied. The aforesaid decisions relied on by the petitioner may not be of assistance to the petitioner in view of the facts involved in the present case. When the Assessing Officer had issued the notice proposing to levy tax on the sales of Rep licences, the legal position on the liability to pay tax on sales of REP licences were already established by the decisions of the Karnataka High Court in 1992 (86) STC 170 and 1992 (86) STC 175 [Bharat Fritz Werner Ltd. v. Commissioner of Commercial Taxes] respectively, which decisions were followed by the Division Bench of this Court in the case of P.S. Apparels (supra), by holding as follows:-

> "15. Finally, the learned counsel appearing on behalf of the petitioners uniformly voiced their grievance against the levy of penalty or threat to levy

penalty under section 12(3) or section 16 (2) of the TNGST Act, 1959, while assessing or proposing to assess the turnover in question to tax. It is the case of the petitioners that even the departmental authorities were under a mistaken impression about the nature of the transaction and the assessability of such transactions to tax till the decision of the Karnataka High Court reported in [1992] 86 STC 170 and [1992] 86 STC 175 (Bharat Fritz Werner Ltd. v. Commissioner of Commercial Taxes) and, therefore, the petitioners and other assessees could not be attributed with wilful non-disclosure of assessable turnover. The fact remains and it is beyond controversy that at no time before the department has assessed the transactions of the nature to tax and that both the assessees and the department shared a common view that there is no taxable turnover involved for assessment in such cases. Not only there were bona fide reasons and genuine grounds for thinking that such transactions as are now under consideration could not be treated as sales attracting levy of tax but the assessees could not in these cases be considered to have not disclosed the same as taxable turnover with a view to evade or avoid or postpone the payment of tax legitimately due to the State. Though for purposes of levy of penalty under sections 12(3) and 16(2) of the Act, a finding regarding wilful non-disclosure is a necessary ingredient and pre-requisite, it cannot be claimed that the culpability or bona fides of the assessee are totally strange concepts even while considering the levy of penalty under section 12(4) and 12(5) of the Act. As rightly held by the Division Bench in the decision reported in (1992) 1 MTCR 81; (printed at page 157 infra) (State of Tamil Nadu v. Indian Silk Traders) though the element of deliberateness, wilfulness or blameworthy conduct on the part of the assessee may not be necessary for invoking section 12 or 12(5) yet the bona fides of the assessee requires to be gone into before imposing the penalty since the underlying intent of penalty is only to deal with the non-disclosure of a turnover which with the oblique purpose of evading liability or postponing the payment of tax lawfully due to the State. Viewed thus, we are unable to come to the conclusion that levy of penalty is warranted at least for the period prior to the date on which the department has first made publicly known its mind to bring to tax transactions of this nature. The respondents have made it known that the transactions of the nature under consideration are liable to be taxed at some point of time during the assessment years 1992-93 and the various assessees had an opportunity to submit revised returns or pay tax due on the transactions in question. Consequently, we are of the view that the penalty, if any, could be leviable only for the assessment years 1992-1993 onwards and the respective assessing authorities shall consider the issue relating to the actual levy of penalty in individual cases depending upon the facts and circumstances of the case, in accordance with law.

16. The petitioners, in some of these writ petitions, have challenged the action of the assessing authorities in bringing to tax such transactions in those cases under the Central Sales Tax Act, 1956, on the ground that there had been no inter-State movement warranting the levy under the Central Act. Except the said plea, the challenge is common with reference to the levy of tax both under the State Act and the Central Act. The reasons assigned by us to reject the

claim of the petitioners also would equally apply to cases relating to the levy under the Central Act. If the petitioners or for that matter any of the assessees consider that the taxable event has not taken place inside this State in terms of the principles laid down by the Central Act, they shall be at liberty to file statutory appeals/revisions as are permissible under law vindicating their rights in respect of such claims and as and when such proceedings are filed, the competent and concerned authorities shall consider the claims in individual cases in accordance with law and on their own merits. The petitioners or such of those assessees who are desirous of filing appeals/revisions in respect of levy already made either under the State Act or Central Act by passing assessment orders shall have the period of statutory limitation fixed therefor counted and computed from this date and the authorities shall entertain and dispose of the appeals, if any filed, in accordance with law.

17. We may also place on record the fact that a learned single Judge as also a Division Bench of the Karnataka High Court in the decisions reported in [1992] 86 STC 170 and 175 (Bharat Fritz Werner Ltd. v. Commissioner of Commercial Taxes) respectively have sustained the levy of sales tax on similar transactions. No doubt, the petitioners have urged in these cases before us some additional points which have been dealt with by us on their own merits. That apart, we are also in respectful agreement with the view expressed by the Division Bench of the Karnataka High Court in the decision reported in [1992] 86 STC 175 (Bharat Fritz Werner Ltd. v. Commissioner of Commercial Taxes).

18. We summarize our conclusions as hereunder:

(a) REP licences/exim scrips are "goods" in etymological sense and in common parlance as also within the meaning of section 2(1) of the TNGST Act, 1959 and section 2(d) of the CST Act, 1956;

(b) The transfer, sale or assignment of those licences for value or consideration shall be liable to levy of sales tax under the sales tax laws in force in the State. The sales to and purchase by designated banks are also subject to levy of tax;

(c) The respective assessing authorities shall be at liberty to proceed in the matter further after giving a further opportunity to make representations by the assessees and in accordance with law, in cases where the proceedings have not been already finalised;

(d) Wherever the proceedings have culminated in an order of assessments made already by the competent assessing authorities, the petitioners/assessees shall be at liberty to pursue their statutory remedies of appeal/revision and the computation and counting of the statutory period of limitation prescribed therefor shall commence from this date and the appellate/revisional authorities shall entertain such appeals, if any filed, in accordance with law and deal with them on merits of the contentions raised;

(e) The levy of penalty under section 12 or 16 of the TNGST Act, 1959, shall be available to the assessing authorities in these categories of cases on and from assessment years 1992-93 onwards, and the authorities shall be at liberty to do so having regard to the facts and circumstances of each case on its own merits;"

15. The only reason, the Assessing Officer could not proceed further, pursuant to the notice proposing to levy tax on REP licences was in view of the interim stay orders granted by the Hon'ble Supreme Court, which restrained the officer from proceeding further. Ultimately, the Hon'ble Apex Court in the case of M/s.Vikas Sales Corporation (supra) had affirmed the decision of this Court holding that REP licences would constitute goods. Thus, it is seen that the petitioner's liability to pay the tax on sales of REP licences was very much in existence during the due date for the assessment years 1993-94 and 1994-95 and the Assessing Officer was unable to confirm the proposal to levy tax on this REP licences only in view of the interim stay orders of the Hon'ble Supreme Court. The Hon'ble Supreme Court had also only affirmed the existing position of law that REP licences are goods as held by this Court in the case of P.S. Apparels (supra) following the decisions of the Karnataka High Court.

16. The revisional authority had also followed this position which was existing even during the time of original assessment, but which came to be stalled for some time, owing to the interim orders of the Hon'ble Supreme Court. Just because the petitioner had chosen to pay the tax within the due date after the revisional authority had assessed the demand raised on sales of REP licences, it cannot be said that there was no liability cast on the petitioner during the time of original proposal to levy tax on REP licences for the relevant assessment years 1993-94 & 1994-95. Hence, when the question whether REP licences constitute goods came to be resolved by this Court in the year 1994 itself and there were no other contrary view expressed by any of the High Courts, the Hon'ble Supreme Court had only affirmed the views of the High Courts holding that REP licences constitute goods.

17. The Assessing Officer had also, while holding that the sales on REP licences are liable to tax, observed that the Hon'ble Supreme Court of India had also affirmed such liability. Touching upon this aspect, the revisional authority had placed reliance on the West Bengal Taxation Tribunal in the case of M/s.Shivdham Wood Products Private Limited (supra) and held that the petitioner would be

liable to pay interest on the tax in respect of sales of REP licences from 01.05.1996, which is the date on which the Hon'ble Supreme Court had decided that REP licences would constitute goods in the case of M/s.Vikas Sales Corporation (supra).

18. The learned counsel for the petitioner attempted to convince this Court stating that the above decision of the West Bengal Taxation Tribunal is distinguishable for the reason that in the said case, the levy of tax on REP licences was challenged after assessment was made and tax was levied on sales of REP licences and therefore the Tribunal had held that the applicant would have paid the tax after the decision of the Hon'ble Supreme Court since the assessment was already made. Since there was no assessment and demand in the petitioner's case, the West Bengal Taxation Tribunal order is not applicable.

19. Such a submission does not require consideration for two reasons. Firstly, it was the specific case of the petitioner in the grounds of revision before the revisional authority that no penal interest is liable on sales of REP licences till 01.05.1996 as held by the West Bengal Taxation Tribunal in the case of M/s.Shivdham Wood Products Private Limited (supra). Even in the personal hearing, the petitioner's authorised representative had relied upon the case of M/s.Shivdham Wood Products Private Limited (supra) and had insisted the revisional authority not to levy penal interest till 01.05.1996 as held in M/s.Shivdham Wood Products Private Limited case (supra). The revisional authority had also accepted the decision of the West Bengal Taxation Tribunal referred to by the petitioner and had held that the petitioner is liable to pay interest from 01.05.1996 only. The petitioner having taken such a stand by placing reliance on the West Bengal Taxation Tribunal cannot now turn around and say that the decision relied upon by them before the revisional authority is distinguishable. Secondly, even during the time of the original proposal to levy tax on REP licences, the legal position was that the REP licences were goods. On a prima facie view, the Hon'ble Supreme Court had granted interim orders of stay on this proposition, which prevented the Assessing Officer to confirm the proposal to levy tax on REP licences. Hence, when the final orders came to be passed by the Hon'ble Supreme Court in M/s.Vikas Sales Corporation's case (supra) on 01.05.1996, the petitioner's liability came to be revived. Therefore, the liability to pay the tax during the pendency of the issue before the

Hon'ble Supreme Court requires to be excluded, which was also the decision taken by the West Bengal Taxation Tribunal holding that the Assessee would be liable to pay tax in respect of sales of REP licences from the date of the judgment of the Hon'ble Supreme Court ie., 01.05.1996. As such, there is no infirmity in the findings of the revisional authority on this aspect.

20. The learned Standing counsel for the respondents had placed reliance on the issue as to whether, interest is liable to be paid for the period when the respondents were restrained from levying any interest in view of the interim stay orders, for which purpose, the learned Standing counsel relied upon the decision of the Hon'ble Supreme Court in the matter of Calcutta Jute Manufacturing Company and another V. Commercial Tax Officer and others and other appeals reported in 1997 (106) STC 433 (SC), wherein it was held as follows:

> "15. But the position here is explicitly distinguishable from the factual situation in M/s JK Synthetics Ltd. Here, nobody had doubt that if section 6B of the Act was called the tax was payable on the turnover. It was the Constitutional Validity of Section 6B which was challenged by the appellants in the earlier writ petitions before the Calcutta High Court and which finally ended up in upholding of it s validity. Hence, there was no question of the assess waiting for the determination and the turnover as there was no dispute on that aspect. The fact that appellants questioned the constitutional validity of the charging provision cannot be equated with a dispute whether the freight paid would also form part of the sale amount. It was a highly debated dispute whether price amount would envelope the freight charges paid by the dealer and until the controversy was resolved by the Court in Hindustan Sugar Mills Ltd. vs. The state of Rajasthan [1978 (4) SCC 271] the dealers were justified in excluding the freight charges from sale price. it was for that reason the constitution bench refrained from mulcting the tax payer with liability to pay interest

additionally. Appellants in these cases have never disputed that they are liable to pay tax on the turnover under section 6B of the Act even while they focussed on the vires of that provision.

16. The tax amount which they should have paid as per section 6-B remained with the appellant during the entire period and they would have earned good profit with that amount. The State, to which the tax amount should necessarily have gone, was not bale to utilize it for public purposes. When appellants had the advantage of keeping the amount of tax without paying it to the State exchequer only because the High court granted orders restraining the State from recovering that amount from the assessee, no act of the Court shall cause prejudice to any party. The prestine doctrine couched in the maxim "actus curiae neminem gravabit" has ever remained a salutary and guiding principle.

17. The contention that as the Courts granted injunction restraining the state from recovering the tax amount as per section 6B would raise a presumption that the court was then satisfied of the bona fides of the contention is too fragile for depriving the state of the statutory right of interest incorporated insection 10-A of the Act. Interim orders are passed by the High Court on a variety of considerations, one among being the strained financial position of the person approaching the court. merely because the court granted interim orders it cannot be inferred that Court was then satsfied of a strong prima facie case for the appellants. On the contrary, it is well neigh settled that there is always a presumption in favour of constitutionality of a legislative act. The presumption cannot be the other way around.

21. In the instant case, the petitioner herein had sought for exemption from payment of tax on REP licences and the issue was pending before the Hon'ble Supreme Court in which the petitioner had also filed a SLP. During the pendency of such proceedings, there was no certainty on the decision to be taken in the issue as to whether there is liability cast on the petitioner, in view of the interim orders granted by the Hon'ble Supreme Court. The clarification came only after the final orders were pronounced in favour of the department. Moreover in Calcutta Jute Manufacturing Company's case (supra), the validity of Section 6(B) imposing a tax on the actual aggrieved turn over of the dealer whose gross turn over exceeds Rs.50 lakhs, was under challenge. The Hon'ble Apex Court, while distinguishing the factual situation in M/s.J.K. Synthesis limited Case (supra) held that when nobody had doubted that if Section 6(B) is valid, the tax was payable on the turn over and therefore, there was no question for the assessee to wait for the determination as there was no dispute on that aspect. Whereas in the instant case, though this Court had held that REP licences are taxable, the Hon'ble Supreme Court had found a prima facie case in favour of the petitioner and stayed levy of taxes on REP licenses. During such pendency, there was an aspect of uncertainty. The Assessing Officer could not also have proceeded further in view of the interim orders granted by the Hon'ble Apex Court. As such, the levy of interest by the Assessing Officer, from the date of the judgment, is justifiable.

22. The additional ground raised by the petitioner is that the levy of interest on belated payment of additional sales tax is not warranted in the absence of an express provision under the Tamil Nadu Additional Sales Tax Act, providing for levy of interest. Such a contention cannot be sustained since the petitioner has lost sight of the amendment made to the Tamil Nadu Additional Sales Tax Act, wherein a specific provision has been inserted providing for levy of interest in respect of additional sales tax. The Amendment Act also provides for validation of any interest paid or payable for belated payments of additional sales tax with effect from 01.04.1970.

23. The learned Standing counsel for the respondents placed reliance on the decision of the Hon'ble Apex Court in the case of Indodan Industries Limited (supra), wherein it was held that the Validation Act validates all previous actions. The following observations made therein are as

follows:

> "... 6.For deciding this batch of Civil Appeals, we need to emphasize clause (d) of sub-Section (2) of Section 120 which, inter alia, states that any proceeding, act or thing which could have been validly taken but not taken may, after commencement, be taken, continued or done. Clause (d), in our view, gives a complete answer to the contention advanced by the assessee on retrospectivity. Section 120 of the Finance Act, 2000 makes sub-Section (2B) effective right from the very first date of commencement of 1956 Act, i.e. 5th January, 1957.
> One more aspect needs to be highlighted. In the present case, we are concerned with the levy of interest for delayed payment. Under sub-Section (2B) to Section 9, such interest for delayed payment is given the status of "tax due". The said interest is compensatory in nature in the sense that when the assessee pays tax after it becomes due, the presumption is that the Department has lost the revenue during the interregnum period (the date when the tax became due and the date on which the tax is paid). The assessee enjoys that amount during the said period. It is in this sense that the interest is compensatory in nature and in order to recover the lost revenue, the levy of interest is contemplated by Section 120 of the Finance Act, 2000 retrospectively."

The aforesaid extract is self explanatory to the effect that the Validation Act, validates all previous actions.

24. The learned counsel for the petitioner had placed reliance on the decision of Karthik Roller Flour Mills case (supra), as well as S.Gurunathan's case. These decisions may not assist the petitioner to substantiate the grounds, since the decision in Karthik Roller Flour Mills case (supra) was rendered even prior to the Validation Act and insofar as the decision in S.Gurunathan's case (supra) is concerned, the High Court did not have the benefit of the

Hon'ble Supreme Court's decision reported in Indodan Industries Limited case (supra). In view of the same, I am unable to endorse the submissions of the learned counsel for the petitioner on this aspect.

25. For all the foregoing reasons, I do not find any infirmity in the orders passed by the first respondent in R.P.No.JJ1/271/04 & R.P.No.JJ1/272/04 dated 10.05.2005. Hence, the Writ Petitions stand dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

DP
To

1.The Joint Commissioner of Commercial Taxes
(Revision Petition),
Ezhilagam, Chepauk,Chennai-5.

2.The Commercial Tax Officer,
Vepery Assessment Circle,
3,Ritherdon Avenue,Chennai-7.

+2ccs to Mr.S.Ramanathan, Advocate SR.No. 74208,74209
+1 cc to Spl Government Pleader Sr.No. 74945

W.P.Nos.33192 & 33193 of 2005
and
WMP.No.36159 of 2005

mr
A.SK(27/09/2019)