IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2019

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NOS.3779 TO 3781 OF 2012
AND
M.P.NOS.1, 1 AND 1 OF 2012

Hydromet India Limited, rep. by its
Managing Director: M.Venkata subramanian
No.156, Vedal Village, Rajakulam post,
Kancheepuram - 631 561. ... Petitioner in all WPs

Vs.

The Commercial Tax Officer,
Kancheepuram (North) Assessment Circle,
Kancheepuram. ... Respondents in all WPs

Prayer in WP.No.3779 of 2012:

Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, to call for the records on the file of respondent herein in TIN: 33131640872/2007-08 dated 23.12.2011 and the consequent demand Notice of Interest dated 23.12.2011 issued in Form RR and quash the same in so far as the levy of interest of Rs.2,05,591/- is concerned as illegal, violative of the provisions of the Tamil Nadu Value Added Tax Act, 2006 and against the Principles of Natural Justice.

Prayer in WP.No.3780 of 2012:

Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, to call for the records on the file of respondent herein in TIN: 33131640872/2008-09 dated 23.12.2011 and the consequent demand Notice of Interest dated 23.12.2011 issued in Form RR and quash the same in so far as the levy of interest of Rs.1,99,950/- is concerned as illegal, violative of the provisions of the Tamil Nadu Value Added Tax Act, 2006 and against the Principles of Natural Justice.

Prayer in WP.No.3781 of 2012:

Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, to call for the records on the file of respondent herein in TIN: 33131640872/2009-10 dated 09.09.2011 and the consequent demand

Notice of Interest dated 09.09.2011 issued in Form RR and quash the same in so far as the levy of interest of Rs.1,14,237/- is concerned as illegal, violative of the provisions of the Tamil Nadu Value Added Tax Act, 2006 and against the Principles of Natural Justice.

(In all WPs)
For Petitioner : Mr.A.Chandrasekaran

For Respondents : Mr.V.Haribabu
Additional Government Pleader

COMMON ORDER

Three orders of assessment for the periods 2007-2008, 2008-2009 and 2009-2010 dated 23.12.2011, 23.12.2011 & 09.09.2011 respectively and relating to the provisions of the Tamil Nadu Value Added Tax Act, 2006, (in short Act) are impugned before me.

2.The petitioner is a manufacturer and dealer in Copper Nickel Ingots, Copper Cathode, Zinc Acid and Zinc Sulphate. It is an assessee on the file of the Commercial Tax Officer, Kancheepuram (North) Assessment Circle (respondent). The petitioner purchased, in the course of its business, various raw materials after payment of necessary tax and claimed Input Tax Credit (ITC) on the tax paid by it to its sellers on the purchase of taxable goods.

3.The orders of assessments under scrutiny in terms of Section 22(3) of the Act were passed on 12.05.2010, 16.05.2011 and 12.08.2011 respectively. Thereafter, notices dated 16.12.2010, 20.05.2011 and 12.08.2011 respectively was issued to the petitioner proposing the reversal of Input Tax Credit (ITC) allegedly claimed in excess of 3% of tax in line with the prescription under Sections 19(4) and 19(5)(c) of the Act. It was also proposed that interest in terms of Section 42(3) of the Act would be levied. No objections were filed by the assessee culminating in the impugned orders of the assessments dated 23.12.2011, 23.12.2011 & 09.09.2011 respectively.

4.The short point argued by Mr.Chandrasekar, learned counsel for the petitioner is that the provisions of Section 42(3) would be inapplicable in the instant case since the demand consequent upon the reversal of ITC has been remitted by the petitioner, for the first two periods, even prior to the 30 day period provided for effecting the remittance.

5.Per contra, Mr.Haribabu, learned Additional Government Pleader appearing for the respondent draws attention to the effect that the adjustment made in the impugned assessments relates to excess claim of ITC. According to him, the petitioner ought to have claimed the appropriate and proper amount of ITC even in the return of income and thus even the self-assessment of the petitioner was incorrect. The provisions of Section 42(1) specifically state that tax under Section 21, being self-assessment tax shall be paid upon notice of demand in that regard and thus the levy of interest for short fall in remittance of self-assessment tax from date of filing of return till the date when it was finally remitted, was in line with the statutory prescription.

6.The provision of Sections 42(1) and 42(3) of the Act dealing with payment and recovery of tax, penalty, etc. are relevant for adjudication of this matter and are extracted below:

> 'Section 42. Payment and recovery of tax, penalty, etc.-(1) Save as other wise provided for in section 21, the tax assessed or has become payable under this Act from a dealer or person and any other amount due from him under this Act shall be paid in such manner and in such instalments, if any, and within such time as may be specified in the notice of assessment, not being less than thirty days from the date of service of the notice. The tax under section 21 shall be paid without any notice of demand. In default of such payment, the whole of the amount outstanding on the date of the default shall become immediately due and shall be a charge on the properties of the person or persons liable to pay the tax or penalty or interest under this Act.
>
> Section 42(2) ....
>
> Section 42(3) On any amount remaining unpaid after the date specified for its payment as referred to in sub-section (1) or in the order permitting payment in instalments, the dealer or person shall pay, in addition to the amount due, interest at [two] per cent per month of such amount for the entire period of default:
>
> Provided that if the amount remaining unpaid is less than one hundred rupees and the period of default is not more than a month, no interest shall be paid:'

7. The scheme of levy of interest under Section 42 is applicable to all assessments of tax barring a self assessment under Section 21. Thus where any amount is due as per the return filed by the petitioner, the same is immediately payable and no separate notice of demand need be issued in that regard as the return of income is itself an assessment of the petitioner. In all other cases, where pre-assessment notice was issued to the petitioner and a demand raised vide an order of assessment, such order of assessment shall be deemed to be a demand notice and the demand raised thereunder is to be paid within 30 days from date of service of the order of assessment. In such cases, interest under Section 42(3) is liable to be paid in addition to the tax demanded at the rate of 2% per month for such month for the entire period of assessment.

8. In the present case, the petitioner has admittedly remitted the demand for the years 2007-2008 and 2008-2009 on 31.01.2011 and 23.06.2011 even prior to the dates of assessment i.e. 23.12.2011. Thus and since the demands have been paid within the timelines stipulated in terms of Section 42(1), no interest can be levied in terms of Section 42(3). As far as the period 2009-2010 is concerned, the order of assessment is dated 09.09.2011 and the demand raised has been remitted on 07.10.2011 within 30 days from date of order itself. Thus even in this case, the provisions of Sections 42(1) and 42(3) of the Act are inapplicable.

9. The arguments of the revenue to the effect that the ITC claimed in the return was incorrect, thus warranting the levy of interest, does not impress. The question of whether a claim of ITC is correct or otherwise is a matter of assessment and would not come within the ambit of self-assessment or computation of advance tax under Section 21. This argument is rejected.

10.These writ petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

The Commercial Tax Officer,
Kancheepuram (North) Assessment Circle,
Kancheepuram.

+1cc to Mr.A.Chandrasekaran, Advocate, S.R.No.90339
+1cc to the Special Government Pleader(T), S.R.No.90201

W.P.Nos.3779 to 3781 of 2012
and
M.P.Nos.1, 1 and 1 of 2012

PVS(CO)
CS/18/02/2020