IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 02.07.2019
CORAM
THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.Nos.18812 and 18814 of 2019 &
W.M.P.Nos.18159, 18161 & 18164 of 2019

M/s.Visoka Engineering Pvt. Ltd.,
Rep. By its Managing Director
No.L-4, SIPCOT Industrial Park
Phase -II
Sriperumbudur - 602 105 .. Petitioner
in both W.Ps

Vs.

1.The Commissioner of Commercial Taxes
Commercial Taxes Ezhilagam
Chepauk, Chennai - 600 005

2. The Joint Commissioner (ST)
Chennai (South) Division
Chennai - 600 006

3.The Assistant Commissioner (ST)
Sriperumbudur Assessment Circle
Varadarajapuram - 602 103 .. Respondents
in both W.Ps

Prayer in W.P.Nos.18812 & 18814 of 2019: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the records on the files of the 1st respondent pertaining to order bearing reference No.D4/17960/2019 dated 12.06.2019 passed by the 1st respondent and quash the same and consequently direct the 1st respondent to pass a speaking order after granting an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.Rajnish Pathiyil

For Respondents : Ms.G.Dhanamadhri
Government Advocate

O R D E R

This common order will dispose of both these writ petitions.

2. Mr.Rajnish Pathiyil, learned counsel on record for writ petitioner in both these writ petitions is before this Court. Ms.G.Dhanamadhri, learned Government

Advocate, accepts notice on behalf of all three respondents in both these writ petitions .

3.With consent of learned counsel on both sides, main writ petitions itself are taken up, heard out and are being disposed of.

4. This Court is informed that subject matter of both these writ petitions are one and the same. Considering the trajectory of the hearing today and the order which this Court proposes to pass, suffice to say that subject matter is payment of interest on belated payment of tax liability under 'Central Sales Tax Act, 1956' ('CST Act' for brevity) as well as 'Tamil Nadu General Sales Tax Act' ('TNGST Act' for brevity).

5.It is not in dispute that under Section 24(3) of TNGST Act for delay in payment of tax, the amount remaining unpaid after the dates specified for its payment, attracts interest at a specified rate. This Court is informed that the position is similar under CST Act also.

6.There is no disputation or disagreement that this is a case where interest in the aforesaid manner has been attracted. This is a case where the writ petitioner has sought waiver of interest. Before this Court proceeds further, it is noticed that first of the writ petitions, namely W.P.No.18812 of 2019 pertains to CST and interest on belated payment, which the writ petitioner is liable to pay, is only Rs.42,127/- (Rupees Forty Two Thousand One Hundred and Twenty Seven only) in all. Writ petitioner undertakes to pay this entire sum of Rs.42,127/-(Rupees Forty Two Thousand One Hundred and Twenty Seven only) within a fortnight from the date of receipt of a copy of this order. If it is paid, that will be the end of the matter. If it is not so paid within the said time frame, the impugned order in W.P.No.18812 of 2019 will stand revived and it will be open to the respondent to proceed in accordance with law.

7. This takes us to the other writ petition, namely W.P.No.18814 of 2019. This writ petition pertains to TNGST Act and the total interest payable vide the impugned order is Rs.39,98,914/- (Rupees Thirty Nine Lakhs Ninety Eight Thousand Nine Hundred and Fourteen only).

8. Learned counsel for writ petitioner submits that a detailed representation dated 19.06.2019 seeking waiver of this interest has been made. Learned counsel draws the attention of this Court to Section 17 of TNGST Act and submits that Section 17 of erstwhile TNGST Act is now Section 31 of 'Tamil Nadu Value Added Tax Act, 2006

(Tamil Nadu Act 32 of 2006)', which shall hereinafter be referred to as ' TNVAT Act, 2006' . Section 31 of TNVAT Act reads as follows:

> '31.Power of Government to notify remission._ The Government may, in such circumstances and subject to such conditions as may be prescribed, by notification, remit the whole or any part of the tax or penalty or interest or fee payable in respect of any period by any dealer under this Act.'

9. Adverting to Section 31 of TNVAT Act, learned counsel submits that Government has ample and adequate power to grant waiver. More importantly, it is the specific and emphatic submission of learned counsel for writ petitioner that such waiver has been granted by the Government to similarly placed persons i.e, persons similarly placed qua the writ petitioner. If this be the case, considering the peculiar facts and circumstances of this case, this Court is of the view that it would be appropriate to direct the Government to consider the petitioner's aforesaid representation dated 19.06.2019, which is for remission of aforesaid interest i.e., Rs.39,98,914/- (Rupees Thirty Nine Lakhs Ninety Eight Thousand Nine Hundred and Fourteen). However, this Court considers it appropriate to impose a condition precedent for the Government to consider the representation for remission. That condition precedent to show bonafide of writ petitioner will be payment of interest of Rs.10,00,000/- (Rupees Ten Lakhs only) from and out of Rs.39,98,914/- (Rupees Thirty Nine Lakhs Ninety Eight Thousand Nine Hundred and Fourteen) by the writ petitioner within eight weeks from the date of receipt of a copy of this order. To be noted, Rs.10,00,000/- is approximately 25% of the interest due. To be noted, the power to consider the representation for remission is vested with the Government under Section 31 of TNVAT Act. 'Government' is a term of art qua TNVAT Act as the same has been defined in Section 2(22) of TNVAT Act. There is no dispute that Government, as defined in Section 2(22) of TNVAT Act, has not been arrayed as a respondent herein. Therefore, this Court deems it appropriate to direct the State counsel to communicate this order to the Government, within the meaning of Section 2(22) of TNVAT Act, for considering the remission application of the writ petitioner being remission application dated 19.06.2019.

11. In the light of the narrative thus far, following order is passed:

a) Writ petitioner shall pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) towards interest due vide impugned order dated 17.06.2019 in W.P.No.18814 of 2019 within eight weeks from the date of receipt of a copy of this order;

b) If the writ petitioner does not pay the aforesaid sum within the aforesaid time frame, impugned order will stand automatically revived without reference to this Court and it will be open to the respondent to proceed in accordance with law.

c) If the writ petitioner pays the aforesaid sum within the aforesaid time frame, the Government shall consider the writ petitioner's application for remission of interest, being application dated 19.06.2019 and dispose of the same in a manner known to law within eights weeks from the date of payment of aforesaid sum albeit within the aforesaid time frame. On disposing of the writ petitioner's application for remission, disposal of the same shall be communicated to the writ petitioner under due acknowledgement within 7 working days from the date of such order.

These writ petitions are disposed of with the aforesaid set of directions. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gpa

To

1.The Commissioner of Commercial Taxes
Commercial Taxes Ezhilagam
Chepauk, Chennai - 600 005

2. The Joint Commissioner (ST)
Chennai (South) Division
Chennai - 600 006

3.The Assistant Commissioner (ST)
Sriperumbudur Assessment Circle
Varadarajapuram - 602 103

+1cc to Mr.Rajnish Pathiyil , Advocate SR.No. 55015
+1 cc to Government Pleader Sr.No. 55479

W.P.Nos.18812 and 18814 of 2019 &
W.M.P.Nos.18159, 18161 & 18164 of 2019

A.SK(07/08/2019)