BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.07.2019

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.(MD)Nos.3676, 3677, 3678 & 3679 of 2015
and M.P.(MD)Nos.1, 1, 1, 1, 2, 2, 2 & 2 of 2015

M/s.Cheran Cements Limited,
Rep. By its Director – P.Kumar Raja,
Kunnagoundanpatty,
Kulithalai Taluk,
Karur District. ... Petitioner in all W.Ps'

Vs.

1.The Joint Commissioner (CT),
Trichy Division,
Trichy – 1.

2.The Commercial Tax Officer,
Kulithalai Assessment Circle,
Kulithalai. ... Respondents in all W.Ps'

Common Prayer: Writ Petitions filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the first respondent in Na.Aa.Nos.15489/2014/A8, 15494/2014/A8, 15498/2014/A8 and 15497/2014/A8 dated 16.02.2015 relating to the assessment years CST 2001-02, 2002-03, 2001-02 and 2002-03 respectively and quash the same as contrary to the provisions of the Tamil Nadu Sales tax (Settlement of Arrears) Act, 2011.

For Petitioner : Ms.R.Hemalatha
(In all W.Ps')

For Respondents : Mr.S.Angappan,
(In all W.Ps') Government Advocate.

COMMON ORDER

Both Ms.R.Hemalatha, learned counsel appearing for the petitioner and Mr.S.Angappan, learned Government Advocate appearing for the respondents rely on an order of the Division Bench of this Court dated 30.11.2015 in W.A(MD)Nos.498 to 507 of 2015, dismissing Writ Appeals filed involving identical issues. The issue in question is whether the case of the matter falls under Section 7(a) or 7(c) of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011.

2.The identical issue falls for resolution before me in the present Writ Petitions in relation to the periods 2001-02, 2002-03, 2001-02 and 2002-03 in terms of the provisions of the Central Sales Tax Act, 1956 as well as Tamil Nadu General Sales Tax Act, 1959.

3.The Division Bench in the aforesaid decision has stated as follows:-

> "*48.We have carefully considered above submission. We have no difficulty in accepting that the settlement of dispute could be different from the settlement of arrears. In cases of settlement of disputes, the quantum of demand and the quantum of admitted amount may vary. Therefore, the parties may strike a deal for resolving the dispute and it is this deal that becomes known as settlement. But, in cases of settlement of arrears, the term 'settlement' connotes payment or payment terms.*
>
> *49. But, the distinction stops there. Every Samadhan Scheme has to be understood and interpreted in the light of the provisions contained in the Scheme itself. It is not possible to invoke an external aid for the construction of a provision in an Act containing a Samadhan Scheme.*
>
> *50. In the Samadhan Scheme, as propounded by the Tamil Nadu Act 29/2011, there is no scope for interpreting clauses (a) and (c) of Section 7, as mutually exclusive of each other. We have already given an illustration as to how such mutual exclusivity would put a premium on the dishonest.*
>
> *51. In any case, the expression 'arrears' need not necessarily be confined to 'admitted arrears'. It could also connote 'disputed arrears' or 'arrears claimed as due'. Therefore, the interpretation sought to be given on the basis of various Samadhan Schemes, cannot also be accepted.*
>
> *52.The last contention of the learned counsel for the appellant is that in any case, the interest of 7.5% imposed under Section 7(a) or Section 7(c) of the Act is payable only from the date of assessment and not from the date of filing of returns. However, by the orders impugned in the writ petitions, rejecting the applications of the appellant under the Samadhan Scheme, the Designated Authority has held that the interest ought to have been calculated from the date of filing of the*

returns. This, according to the learned counsel for the appellant, is contrary to the decision of a Division Bench of this Court in E.D.I.Parry (India) Limited vs. Assistant Commissioner (CT) and others - 126 STC 449 Mad.

53. But, we do not know how reliance is placed upon the decision in EID Parry (India) Limited. That was a case where the assessee filed supplementary returns. The supplementary returns covered freight charges and transport subsidy. Along with the supplementary returns, the assessee remitted an additional tax, but under protest. Thereafter, assessments came to be made. Therefore, the question arose as to whether the filing of supplementary returns, subsequent to the filing of a return under Section 13(2) with a demur that the amount is being paid under protest, can be regarded as a return under Section 13(2) for the purpose of levy of interest under Section 24(3).

54.While answering this question in favour of the assessee, the Division Bench of this Court pointed out that if the stand taken by the assessee about the need to file a supplementary return was bonafide and not as a mere ruse to avoid payment of interest, then the department cannot claim interest under Section 24(3). Therefore, the above decision has no application to the cases on hand.

55.. In the cases on hand, the appellant had availed the benefit of deferred payment of sales tax under a particular scheme. They committed a breach of the agreement executed with the department. Therefore, as per the agreement and the interest free deferral scheme, they were liable to pay interest from the date of filing of monthly returns. The emphasis on bonafide conduct of an assessee made by the Division Bench in EID Parry is completely absent in this case. This case is governed not merely by the statutory provisions relating to payment of interest, but also by the agreement executed by the appellant with reference to the interest free deferral scheme. A person who had collected tax from the customers and allowed to retain it under a deferred payment scheme, cannot claim that he would pay 40% of what was collected by him together with interest calculated from the date of assessment. This is not the purport of the Samadhan Scheme.

56. Therefore, all the writ appeals are completely devoid of merits. Hence they are dismissed. No order as to costs. Connected miscellaneous petitioners are also dismissed."

4.In the light of the aforesaid, there is no merit in these Writ Petitions and the same are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

1.The Joint Commissioner (CT),
Trichy Division,
Trichy – 1.

2.The Commercial Tax Officer,
Kulithalai Assessment Circle,
Kulithalai.

+1 CC to M/s.SPL GP (SR-75010[F] dated 12/07/2019)

W.P.(MD)Nos.3676, 3677, 3678 & 3679 of 2015
10.07.2019

ps
JM/19.09.2019/4P/4C