IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.09.2020
Pronounced on: 03.11.2020

C O R A M

The Hon'ble Mr. A.P.SAHI, THE CHIEF JUSTICE
and
The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition Nos.34716 to 34719 of 2005

Nestle India Limited
represented by its Branch Administration Executive,
Raja Venkatasubramaniam,
769, Anna Salai,
Chennai-600 002. ...Petitioner in all WPs

vs.

1. The Assistant Commissioner (CT),
Fast Track Assessment Circle-IV,
PAPJM Buildings, IV Floor,
Greams Road, Chennai-600 006.

2. The Deputy Commissioner (CT),
Chennai (South) Division,
PAPJM Buildings, II Floor,
Greams Road,
Chennai-600 006.

3. The Joint Commissioner (CT),
(Revision Petition),
Office of the Commissioner of Commercial Taxes
Chepauk, Chennai-600 005.
...Respondents in all WPs

PRAYER in W.P. No.34716 of 2005 : Petition filed under Article 226 of the Constitution of India praying to call for the records on the file of the third Respondent herein in R.P.No.JJ1/RP/100/05-2002-2003 dated 09.08.2005 and issue a writ of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, quashing the proceedings of the third Respondent herein in R.P.No.JJ1/RP/100/05-2002-2003 dated 09.08.2005 confirming the proceedings of the second respondent herein in R.P. No.29/2004 (CST) dated 20.01.2005 and that of the first Respondent herein in T/1341300//2002-2003 dated 08.09.2004 insofar as demanding interest under Section 24(3) of the Tamil Nadu General Sales Tax Act, 1959.

PRAYER in W.P.No.34717 of 2005: Petition filed under Article 226 of the Constitution of India praying to call for the records on the file of the third Respondent herein in R.P.No.JJ1/RP/98/05-2003-2004 dated 09.08.2005 and issue a writ of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, quashing the proceedings of the third Respondent herein in R.P.No.JJ1/RP/98/05-2003-2004 dated 09.08.2005 confirming the proceedings of the second respondent herein in R.P. No.1/2004 (CST) dated 20.01.2005 and that of the first Respondent herein in CST/649651/2003-04 dated 08.09.2004 insofar as demanding interest under Section 24(3) of the Tamil Nadu General Sales Tax Act, 1959 read with Section 9(2) of the Central Sales Tax Act, 1956.

PRAYER in W.P.No.34718 of 2005: Petition filed under Article 226 of the Constitution of India praying to call for the records on the file of the third Respondent herein in R.P.No.JJ1/RP/101/05-2003-2004 dated 09.08.2005 and issue a writ of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, quashing the proceedings of the third Respondent herein in R.P.No.JJ1/RP/101/05-2003-2004 dated 09.08.2005 confirming the proceedings of the second respondent herein in R.P. No.30/2004 dated 20.01.2005 and that of the first Respondent herein in T/1341300/2003-04 dated 08.09.2004 insofar as demanding interest under Section 24(3) of the Tamil Nadu General Sales Tax Act, 1959.

PRAYER in W.P.No.34719 of 2005: Petition filed under Article 226 of the Constitution of India praying to call for the records on the file of the third Respondent herein in R.P.No.JJ1/RP/99/05-2002-2003 dated 09.08.2005 and issue a writ of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, quashing the proceedings of the third Respondent herein in R.P.No.JJ1/RP/905-2002-2003 dated 09.08.2005 confirming the proceedings of the second respondent herein in R.P. No.2/2004 (CST) dated 20.01.2005 and that of the first Respondent herein in CST/649651/2002-03 dated 08.09.2004 insofar as demanding interest under Section 24(3) of the Tamil Nadu General Sales Tax Act, 1959 read with Section 9(2) of the Central Sales Tax Act, 1956.

For Petitioner : Mr.N.Prasad
(in all WPs)
For Respondents : Mr.Mohammed Shaffiq, Spl. Govt. Pleader
(in all WPs) Assisted by
Ms.Dhana Madhri, Government Advocate

COMMON ORDER

SENTHILKUMAR RAMAMOORTHY J.,

In respect of assessment years 2002-03 and 2003-04, a common order dated 09.08.2005 was passed by the third Respondent in four revision petitions affirming separate orders dated 20.01.2005 of the second Respondent, which, in turn, affirmed separate orders dated 08.09.2004 of the first Respondent levying interest on the Petitioner under Section 24(3) of the Tamil Nadu General Sales Tax Act, 1959 (the TNGST Act) or under Section 24 (3) of the TNGST Act read with Section 9(2-A) of the Central Sales Tax Act, 1956 for the belated payment of tax. In these writ petitions, the aforesaid orders are challenged on the same grounds; therefore, these writ petitions are disposed of by this common order.

2. Originally, monthly sales tax returns were to be filed by all dealers on or before the 20^{th} of the succeeding calendar month along with the tax due and payable as per the self-assessment of the dealer. By an amendment to Rule 18(2) of the Tamil Nadu General Sales Tax Rules (the TNGST Rules), the date of filing returns was advanced for dealers with a taxable turnover of Rs.200 crore or more in the previous financial year. As a result, such dealers were directed to file their monthly returns on or before the 12^{th} of the succeeding calendar month. The Petitioner admittedly failed to submit the returns for the relevant periods on or before the 12^{th} of the succeeding calendar month. However, the returns for the relevant period were filed on or before the 20^{th} of the succeeding calendar month.

3. By the impugned order of the third Respondent dated 09.08.2005, the third Respondent held that the Petitioner is liable to pay interest under Section 24(3) of the TNGST Act or under Section 24(3) read with Section 9(2 A) of the CST Act, as the case may be, which provide for the levy of interest if taxes are paid belatedly. On that basis, the orders of the second Respondent were confirmed by the third Respondent. The present writ petitions were filed in these facts and circumstances.

4. We heard Mr.N.Prasad, the learned counsel for the Petitioner; and Mr. Mohammed Shaffiq, the learned Additional Government Pleader (Taxes) for the Respondents.

5. The first contention of Mr.Prasad was that Section 24(3) of the TNGST Act is not applicable in the present case. In order to substantiate this contention, he invited the attention of the Court to Section 24(3) and pointed out that Section 24(3) is attracted only if any amount remains unpaid after the date specified for its payment as per sub-section (1) of Section 24.

Section 24(1) provides for the payment of tax under two situations. The first situation being a case which is provided for under Sub-Section (2) of Section 13, namely, where returns are filed and taxes paid on the basis of self-assessment. The second situation relates to cases where the tax department makes an assessment. He further submitted that, in these cases, the admitted position is that the tax authorities did not undertake assessment.

6. Consequently, one should turn to Section 13(2) to determine as to whether any amount was payable by way of tax and, if so, on what date such amount became payable. By inviting our attention to Section 13(2), the learned counsel submitted that this provision applies when tax is paid in advance on self-assessment. Therefore, it provides for the filing of returns on the basis of actual turnover for each month and the payment of tax on the basis of such returns. Given the fact that returns are filed and tax is paid on the basis of self-assessment, he contended that Section 13(2) provides that the tax shall become due without any notice of demand subject to the caveat that such tax becomes due either on the date of receipt of the returns or on the last due date, as prescribed, whichever is later. In each of these cases, such returns were admittedly filed after the 12th of the succeeding calendar month but before the 20th. Consequently, as per Section 13(2), taxes became due and payable only on the date when the returns were actually filed by the dealer. To put if differently, the dealer becomes liable to pay tax only if the tax is not paid along with such returns. As a matter of fact, in these cases, the taxes that were due and payable, as per the return, were always paid along with the returns. In this factual situation, he submits that the Petitioner/dealer is not liable to pay interest as per Section 24(3) read with Section 24(1) and Section 13(2) of the TNGST Act.

7. On a demurrer, Mr.Prasad submits that Section 24(3-A) and not Section 24(3) would be attracted in the present cases. He points out that Section 24(3-A) was introduced by way of an amendment in the year 1999. As per Section 24(3-A), in cases where a dealer submits the prescribed return within 10 days after the expiry of the prescribed period, he shall also pay in addition to the amount of tax due, as per his return, interest at 2% of the tax payable for every month or part thereof. In view of the fact that the Petitioner submitted the returns and paid the taxes within 10 days from the 12th of the succeeding calendar month [prescribed period] by always doing so before the 20th, he submitted that the Petitioner's case would fall within the scope of Section 24(3-A).

8. In support of the contention that Section 24(3) of the TNGST Act does not apply, Mr.Prasad relied upon the judgment of the Hon'ble Supreme Court in EID Parry (India) Limited v. Assistant Commissioner of Commercial Taxes, (2005) 141 STC 12 (EID Parry). By drawing reference to paragraph 5 of the said judgment, he submitted that the question that arose for consideration in that case was whether interest could be charged under Section 24(3) on the price fixed under Clause 5-A of the Sugarcane (Control) Order, 1966 (the Sugarcane Order) and/or on the advance paid along with the monthly return. Upon considering the said question, the Hon'ble Supreme Court concluded that the price of sugar cannot be decided at least till the end of the sugar year. Consequently, the monthly return filed without showing the price fixed under Clause 5 A of the Sugarcane Order would be neither incorrect nor incomplete. The Hon'ble Supreme Court further held that self-assessment tax is payable only when the returns are filed and not prior to such date. On the facts of that case, the tax was paid along with the returns and prior to assessment. Hence, the Hon'ble Supreme Court concluded that interest was not payable as per Section 24 (3) of the TNGST Act.

9. On the contrary, Mr.Mohammed Shaffiq submitted that Rule 18(2) of the TNGST Rules was amended in the year 1999. The amended Rule 18(2) categorically provides that a dealer whose taxable turnover in the preceding year is Rs.200 crore or more is required to submit the returns to the assessing authority on or before the 12^{th} of the succeeding calendar month. He further submitted that the undisputed factual position, in these cases, is that the turnover of the Petitioner herein during the relevant period was in excess of Rs.200 crore in the relevant preceding year. Consequently, there is no doubt that the Petitioner was required to file the returns on or before 12^{th} of the succeeding calendar month. Factually, it is also the admitted position that the Petitioner failed to file returns and pay the tax on or before the 12^{th} as required by the statute. Therefore, Mr.Mohammed Shaffiq contended that the Petitioner is liable to pay interest on such belated payments.

10. His next contention was that such interest was payable under Section 24(3) because the tax becomes due and payable on the last date prescribed for filing returns. Accordingly, interest was payable from the 12^{th} of the succeeding calendar month and not from the actual date of filing of the returns. In any event, he submitted that Section 24(3-A) makes it very clear that interest is payable on belated payment of tax even if the return is filed within 10 days from the prescribed date,namely, the 12^{th} of the relevant succeeding month.

11. As regards the judgment in EID Parry, he submits that the said judgment turned on the fact that the dealer therein was dealing in sugar, which was a controlled commodity and price fixation was a complicated exercise. In those facts and circumstances, the Hon'ble Supreme Court concluded that the turnover could not be determined at the time of filing of the return as the price of sugar was fixed subsequently as per Section 5-A of the Sugarcane Order and, therefore, the dealer could not be penalized for filing returns on the basis of a provisional turnover.

12. We considered the submissions of the learned counsel for the respective parties and examined the materials placed on record.

13. Rule 18(2) of the TNGST Rules prescribes the time limit for a dealer to file a return. The said Rule 18(2) is, inter alia, as under:

> "R.18(2) Subject to the provisions of sub-rule (5), the dealer shall submit a return (in Form - A) showing the total and taxable turnover for each month and the amount or amounts actually collected by him by way of tax or taxes during that month. The return for each month in respect of the dealer whose taxable turnover in the preceding year is two hundred crores of rupees and above, shall be submitted so as to reach the assessing authority on or before 12th of the succeeding month and in respect of other dealer, the return for each month shall be submitted so as to reach the assessing authority on or before the 20th of the succeeding month...."

14. The undisputed position is that the Petitioner's turnover during the relevant preceding years was in excess of Rs.200 crore. Therefore, as per Rule 18(2), the return was required to be filed on or before the 12th of the succeeding English calendar month. It is also admitted by the Petitioner that the returns were filed after the 12th of the relevant month but on or before the 20th thereof. This leads to the question as to whether the Petitioner is liable to pay interest on account of the belated filing of the returns. The contention of Mr.Prasad was that interest is not payable as per Section 24(3) because tax was paid along with the returns and there was no default. In order to test this contention, it is relevant to closely examine the text of Section 24(1), Section 24(3) and Section 13(2). Accordingly, the said provisions are set out below:

"Section 24. Payment and recovery of tax:-- (1) Save as otherwise provided for in sub-section (2) of section 13, 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 installments, if any and within such time as may be specified in the notice of assessment, not being less than twenty one days from the date of service of the notice.

Section 24(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 installments, the dealer or person shall pay, in addition to the amount due, interest at one and half percent per month of such amount for the first three months of default and at two per cent per month of such amount for the subsequent period of default.

Sec.13(2) In lieu of the tax provisionally determined under sub-section (1), a dealer may, at his option, pay tax in advance during the year on the basis of his actual turnover for each month or for such other periods as may be prescribed. For this purpose, he may be required to furnish returns showing his actual turnover for each month or other periods as may be prescribed and to pay tax on the basis of such returns. The tax under this sub-section shall become due without any notice of demand to the dealer on the date of receipt of the return or on the last due date as prescribed whichever is later."(emphasis added).

15. On examining Section 24(3), we find that it provides for the payment of interest on amounts remaining unpaid after the date specified for payment as per Section 24(1). Therefore, Section 24(1) should be examined. Section 24(1) consists of two limbs. The first limb is in the nature of an exception and deals with cases that are within the scope of Section 13(2). The second limb deals with cases where an assessment is carried out by the tax authorities. In such cases, Section 24(1) provides that the tax would become payable on the date specified in the notice of assessment provided that such date is at least 21 days from the date of service of notice. Mr.Prasad submitted that no assessment was carried out by the tax authorities, as regards the impugned interest demand, and this submission is not refuted

by the learned Additional Government Pleader (Taxes). Consequently, the second limb of Section 24(1) does not apply to this case. This leads to Section 13(2). Under Section 13(2), it is stipulated that the tax under sub-section(2) shall become payable without any notice of demand to the dealer on the date of receipt of the return or on the last due date as prescribed whichever is later.

16. When applied to the facts of these cases, the last date prescribed was the 12th of the succeeding calendar month, whereas the actual date of filing of the return was on various dates between the 13th and 20th. In E.I.D. Parry, the dealer was a producer of sugar which filed its returns within the period prescribed and paid tax on the basis of the minimum price of sugar and the taxable turnover arrived at on such basis and disclosed in such returns. Because sugar is a controlled commodity, price fixation was done subsequently based on a formula prescribed in the Sugarcane Order. The dealer paid tax on the difference between the minimum price and the subsequently determined price by filing revised returns subsequently but the tax department imposed interest on the belated payment of tax on such differential amount. In that factual context, the Supreme Court concluded that tax is required to be paid, under Section 13(2), on the basis of returns and since this was done, interest could not be imposed under Section 24(3) without an assessment by the tax authorities. In our view, this judgment does not advance the cause of the Petitioner. In the case at hand, both the filing of the return and the payment of tax, as per the said return, were after the prescribed date, namely, the 12th of the succeeding calendar month. The question as to whether interest would be payable if a return is filed without paying the tax due, as per Section 13(2), was considered in Indian Commerce and Industries Co. Pvt. Limited and Ors. v. The Commercial Tax Officer and Ors. [2003] 129 STC 509=MANU/TN/2201/2002 (Indian Commerce and Industries), wherein a Division Bench of this Court held that interest is payable under Section 24(3) of the TNGST Act without a notice of demand if the return is filed without enclosing proof of payment of tax. More importantly, in paragraph 42 of the said judgment, another Division Bench judgment in Ceat Limited v. State of Tamil Nadu 1995 (96) STC 26 (Ceat Limited) was relied upon and extracted as under:

> "42. Another Division Bench of this Court, while construing Section 13(2) and Rule 18 has held as follows in the case of CEAT LTD. VS. STATE OF TAMIL NADU AND ANOTHER 1995 (96) STC 26.
>
> " It is clear from sub-rule (2) of rule 18 that in the case of self-assessment, the return for each month shall have to be submitted so as to reach

> the authority on or before the 20th of the succeeding month and along with the return, the tax-paid receipt has also to be enclosed. Thus, it is open to the dealer to pay the tax on any date from 1st of the succeeding month till the 20th and file the return either on the 20th of the succeeding month or on any date before that date, that is to say, from the 1st to 20th of the succeeding month. What is necessary is that along with the return, the proof of payment of the tax as specified in sub-rule (1) of rule 55, has also to be enclosed. As such, the last date prescribed for payment of tax due as well as for filing of the return is 20th only. Hence it is not possible to hold that either sub-rule (2) of rule 18 is in any way contrary to sub-section (2) of Section 13 of the Act, or that the return can be filed by the dealer on any date subsequent to 20th of the succeeding month without incurring penalty. The expression, "whichever is later" found in sub-section (2) of section 13 of the Act is only to give latitude to the dealer to pay the tax on any date from 1st to 20th of the succeeding month along with a tax-paid receipt. Hence, it does not mean that the return can be filed later than 20th of the succeeding month. The tax can be paid earlier to the filing of the return, but in either case it shall not be later than 20th of the succeeding month."
>
> The very same Division Bench while construing the very provision i.e. Section 13(2) and Rule 18 of the TNGST Act and Rules respectively has held that the liability to pay interest under Section 24(3) is automatic and absolute from the date on which it becomes due and the question of bona fide on the part of the dealer or the dealer voluntarily filing a revised return after the due date showing the actual turnover is not at all relevant for deciding the liability of defaulting dealer to pay interest under Section 24(3) of the Act in the case of GODREJ & BOYCE MANUFACTURING CO. LTD. VS. JOINT COMMISSIONER OF COMMERCIAL TAXES IV AND OTHERS reported in (1995) 97 STC 44."

Thus, Section 13(2) of the TNGST Act was construed in Ceat Limited, albeit in the context of Rule 18(2) as it stood before the amendment made by G.O. Ms. No.231/CT dated 10.11.1999, and, the words "whichever is later", occurring therein were interpreted to mean that the tax should be paid prior to or along with the return on any date up to the 20th of the following English calendar month. Otherwise, the dealer would be liable to pay interest under Section 24(3).

17. Nonetheless, the distinctive feature, in this case, is that there is another provision to which our attention was drawn, namely, Section 24(3-A), which was in force during the relevant assessment years, but was not cited either by the Petitioner or by the tax department in the proceedings that preceded these writ petitions. The said provision is as under :

> "Se.23(3-A) Where a dealer submits the prescribed return within ten days after the expiry of the prescribed period, he shall also pay, in addition to the amount of tax due as per his return, interest at two per cent of the tax payable for every month or part thereof."

As per this provision, a dealer who files the prescribed return, after the expiry of the prescribed period, but within 10 days from the expiry thereof is required to pay interest at 2% of the tax payable for every month or part thereof. It is abundantly clear that the liability to pay interest under Section 24(3-A) is triggered if the return is not filed on the prescribed date. However, this provision applies only if the return is filed belatedly but within 10 days from the expiry of the prescribed period. The prescribed period in these cases is the 12th of the succeeding calendar month and the learned Additional Government Pleader does not dispute the fact that the returns were filed on or before the 20th of the succeeding calendar month, which is within 10 days from the prescribed last date. Therefore, Section 24(3-A) undoubtedly applies to these cases. On account of the above position, we conclude that the apposite provision, in this case, is Section 24(3-A) rather than Section 24(3).

18. Once Section 24(3-A) is held to be applicable, the challenge to the impugned orders is not sustainable and these orders are not liable to be interfered with except to the limited extent of holding that the relevant provision in these cases is Section 24(3-A) and not Section 24(3). In this regard, the settled position is that an order is not vitiated merely because a wrong provision of law is cited therein provided the relevant statute contains an appropriate provision for such purpose. It is sufficient, in this regard, to draw reference to H.L. Mehra v. Union of India (1974) 4 SCC 396, where it was held as under:

> "8. But that does not conclude the question. It is now well settled that when an authority passes an order which is within its competence, it cannot fail merely because it purports to be made under a wrong provision, if it can be shown to be within

its power under any other provision. If the power is otherwise established, the fact that the source of the power has been incorrectly described in the order would not make it invalid...."

Therefore, subject to the observations made supra, all these writ petitions are disposed of by affirming the liability to pay interest, albeit in terms of Section 24(3-A) of the TNGST Act read with the relevant provision of the CST Act, where applicable. There shall be no order as to costs. Consequently, miscellaneous petitions, if any, are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Commissioner (CT),
Fast Track Assessment Circle-IV,
PAPJM Buildings, IV Floor,
Greams Road, Chennai-600 006.

2. The Deputy Commissioner (CT),
Chennai (South) Division,
PAPJM Buildings, II Floor,
Greams Road,
Chennai-600 006.

3. The Joint Commissioner (CT),
(Revision Petition),
Office of the Commissioner of Commercial Taxes
Chepauk, Chennai-600 005.

+1cc to the Government Pleader, S.R.No.35580
+1cc to M/s.N.Inbarajan, Advocate, S.R.No.35344

Pre-delivery common order in W.P. Nos.34716 to 34719 of 2005

SSD(CO)
RV(30/11/2020)