IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	21.01.2020
Pronounced On	19.05.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.36452 of 2005

Southern Petrochemical Industries
Corporation Limited,
88, Mount Road, Guindy,
Chennai - 600 032. ... Petitioner

Vs.

The Assistant Commissioner (CT),
Fast Track Assessment Circle - I,
Chennai - 600 006. ...Respondent

This Petition originally filed before the Tamil Nadu Taxation Special Tribunal, Chennai, under Section 7 of the Tamil Nadu Act 42 of 1992, to call for the records on the files of the respondent herein in TNGST No.1579/1985-86 dated 30.04.2003, quash the same as illegal and issue a direction requiring the respondent herein to restore the sum of Rs.1,02,39,134/- as interest against monies deposited under interim directions dated 29.03.2000 of the Hon'ble Division Bench in W.M.P.No.21753 of 1998. This Petition numbered as O.P.No.1234 of 2003 before the Tamil Nadu Taxation Special Tribunal, Chennai and it was transferred to this Court and renumbered as this Writ Petition (W.P.No.36452 of 2005.

For Petitioner : Mr.N.Prasad

For Respondent : Mr.R.Swarnavel,
Government Advocate (T).

ORDER

This Petition was originally filed before the Tamil Nadu Taxation Special Tribunal, Chennai under Section 7 of the Tamil Nadu Act 42 of 1992 and numbered as O.P.No.1234 of 2003. Thereafter, it was transferred to this Court and renumbered as this Writ Petition (W.P.No.36452 of 2005).

2. In this Writ Petition, the petitioner has challenged the

impugned order dated 30.04.2003 of the respondent. By the impugned order dated 30.04.2003, the respondent has informed the petitioner that though the Hon'ble 1st Bench of this Court had earlier ordered payment of interest to the petitioner if the writ petitions filed by the petitioner were allowed, interest cannot be paid to the petitioner by the respondent since the order of the Hon'ble Supreme Court was silent and did not mention about the payment of interest. The operative portion of the impugned communication reads as follows:-

> “In the absence of any specific orders in the Supreme Court of India in the above said case (Civil Appeal No.5678 of 2000), payment of interest by Govt. does not arise.

3. The petitioner is engaged in manufacture and sale of fertiliser. The sale of fertiliser being controlled by the Central Government under the price control mechanism, the petitioner was given compensation by the Central Government to offset the loss. Notices were being issued to dealers/manufacturers across the State on the ground that the subsidy received from the Central Government under the price mechanism was liable to be included into their taxable turnover for the purpose of payment of tax under the TNGST & CST Rules.

4. Against these demand notices, the petitioner and other manufacturers filed Writ Petitions before this Court. The petitioner filed W.P.No.21753 of 1988. Several other Writ Petitions and other proceedings were also filed by the other manufacturers of fertiliser. These Writ Petitions were listed before the Hon'ble 1st Bench of this Court.

5. By an order dated 29.03.2000, the Hon'ble 1st Bench of this Court observed that the manufacturers shall continue to deposit 50% of the tax as ordered earlier on 08.03.1999. Subject to the payment proceedings impugned in the said batch of Writ Petitions were stayed. The Hon'ble 1st Bench of this Court further observed that “In any event of the writ petition is being allowed, the Department shall pay interest on the amount”.

6. Meanwhile, Neyveli Lignite Corporation (NLC) had taken up the issue before the Tamil Nadu Special Taxation Tribunal. Since adverse orders came to be passed by the said Tribunal, NLC filed Civil Appeal No.6243 to 6245 before the Hon'ble Supreme Court. Under these circumstances, the petitioner filed Transfer Petition Nos.239 to 247 of 2007 before the Hon'ble Supreme Court to transfer its Writ Petitions for being heard along the NLC's case. In the said Transfer Petitions, the Hon'ble Supreme Court directed this Court to transfer the pending Writ Petitions filed

by petitioner before this Court to be heard along petitions filed by NLC before it.

7. The Hon'ble Supreme Court vide its order dated 07.09.2001 allowed the Transfer Petitions filed by the petitioner. By the said order, it was made clear that the transfer order shall not render the interim order passed by the Hon'ble 1st Bench of this Court otiose. In other words, pending disposal of the Writ Petitions and above Civil Appeals, the petitioner was to continue to pay 50% of the tax demanded.

8. Eventually, the Hon'ble Supreme Court by its decision dated 19.09.2001 disposed the Civil Appeals and the Writ Petitions filed by the petitioner holding that subsidy in the form of retention price paid to the petitioner and other manufacturers by the Central Government were not to be included into the taxable turnover. The said decision is reported in Neyveli Lignite Corporation Ltd Vs. Commercial Tax Officer, [2001] 124 STC 586.

9. Under these circumstances, the petitioner filed a representation dated 11.10.2001 before the respondent and informed the respondent that pursuant to the interim directions of the Hon'ble 1st Bench of this Court, the petitioner had paid a total sum of Rs.5,67,52,223/- during the period between 1985-86 and 1993-1994 and therefore, it was entitled to interest at 24% after due adjustment of the tax liabilities.

10. By another letter dated 12.12.2001, the petitioner informed the respondent that for the month of November 2001, it was liable to pay a tax of Rs.3,95,90,059/- and that it had made an adhoc payment totalling to Rs.45,00,000/- in two installments and therefore, requested adjustment of the balance partly out of the amounts deposited pursuant to order dated 29.03.2000 of the Hon'ble 1st Bench of this Court.

11. The petitioner also informed the respondent that out of balance amount was also being adjusted towards interest payable on the amount deposit as per the directions of the Hon'ble 1st Bench of this Court and the balance of Rs.1 Crore will be paid during the course of the month. The operative portion of the said letter reads as under:-

> Out of the total sales tax liability of Rs.3,95,90,059/-, we have already made adhoc payments of Rs.25,00,000/- and Rs.20,00,000/- on 30.11.2001 and 4.12.2001 respectively. After adjusting the above adhoc payments, the balance sale tax liability payable by us for November 2001 is Rs.3,50,90,059/-. Out of the remaining

sales tax dues of Rs.3,50,90,059/-, we are adjusting Rs.2,09,91,745/- being the balance amount of 50% deposit refundable to us, based on the Supreme Court judgment on fertiliser subsidy matter.

Out of the balance amount of Rs.1,40,98,314/-, we are adjusting a sum of Rs.40,98,318/- towards interest payable on the above deposit as per High Court interim order dated 29.03.2000. The balance amount of Rs.1 crore will be paid by us during this month.

12. The petitioner was thereafter called upon the respondent. It appears that certain deliberations also took place as per which the petitioner was asked to quantity the interest at 1% per month in terms of Section 24(4) of TNGST Act, 2006 since the order of this Court did not specify interest.

13. Accordingly, the petitioner re-quantified the interest and submitted a chart along with its representation dated 18.04.2002 with the respondent claiming an interest of Rs.92,24,933/- at 1% per month on the aforesaid deposit of Rs.5,67,52,223/-.

14. The learned counsel for the petitioner submits that it may be allowed to adjust Rs.92,24,933/- towards tax liability instead of cash refund. There is no counter filed by the respondent. However, on instructions from the respondent, the learned Government Advocate appearing for the respondent submits that in absence of a clear directions from the Hon'ble Supreme Court, question of payment of interest does not arise.

15. I have heard the learned counsel for the petitioner and the learned Government Advocate (T) appearing for the respondent.

16. The Hon'ble Supreme Court in Neyveli Lignite Corporation Ltd Vs. Commercial Tax Officer, [2001] 124 STC 586 has held that the payment which was made by the Government to the manufacturer like petitioner could not be regarded as discharge of any liability or obligation by the Government towards the purchase of the fertiliser. The two payments received by the manufacturer, viz the subsidy and the price fixed under the Control order, were independent of each other.

17. The Court held that subsidy under the Government Scheme did not form part of the bargain between the manufacturer and the purchaser of the fertiliser. The amount given by the Government under the administrative scheme furnishing subsidy was held not part of the sale price or consideration for the

sale of fertilisers by the appellant (the manufacturer) and did not form part of the "turnover" for the purpose of Tamil Nadu General Sales Tax Act, 1959.

18. The Court ruled that any payment received de-horse the contract of sale from another entity, whether the Government or anyone else, cannot be regarded as being an amount which would form part of the sale price on which tax was payable.

19. The Hon'ble Supreme Court was not concerned with the interim order. It has merely answered the larger issue on merits along with Neyveli Lignite Corporation by holding the amounts paid by the Government to the petitioner did not form part of such consideration for sale of fertiliser and therefore, no tax liability can be fastened on them on such amounts received from the Government. Thus, the amount which was deposited by the petitioner pursuant to the interim order dated 08.03.1999 as continued by an order 19.03.2000 of the Hon'ble 1st Bench of this Court was a mere deposit. The amounts paid by the petitioner ought to have been refunded back to the petitioner. The petitioner has also made certain adjustments towards payment of tax.

20. Since the amount also would have fetched interest, there is no justification in not paying interest to the petitioner after the Writ Petition was allowed by the Hon'ble Supreme Court. Further, the interim order in the writ petitions categorically stated that the petitioner was entitled to interest. Therefore, there the respondent was obliged to pay interest to the petitioner.

21. However, it appears that the petitioner has suo moto utilised the amount deposited and interest accrued thereon towards tax liability as is evident from the petitioner's letter dated 12.12.2001. The adjustment made would require verification as the petitioner has itself already adjusted Rs.40,98,314 from the interest accrued thereon. Therefore, it is not clear how the petitioner is asking for further interest. The respondent has also not filed any counter to clearly state the amounts that are due if interest was to be paid.

22. Under the circumstances, I therefore direct the respondent to calculate interest at the rates that were prevailing and adopted from time to time for refund of excess amount paid as tax under the provisions of the Tamil Nadu General Sales Tax Act, 1959.

23. The respondent is therefore directed to calculate the interest at such rates on the amounts deposited by the petitioner and arrive at the interest payable to the petitioner. Interest amount if any payable to the petitioner shall be first

adjusted towards arrears of tax liability if any of the petitioner and thereafter balance if any be refunded in cash to the petitioner. This exercise shall be carried out by the respondent within a period of three months from date of receipt of a copy of this order.

24. This Writ Petition stands allowed with the above observation.No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

ssi / jen

To

The Assistant Commissioner (CT),
Fast Track Assessment Circle - I,
Chennai - 600 006.

+1cc to the Special Government Pleader(Taxes), S.R.No. 4269

W.P.No.36452 of 2005

LN(CO)
GN(01/07/2020)