

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 25.02.2021
CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MS.JUSTICE R.N.MANJULA

Orders Reserved On 03.02.2021	Orders Pronounced On 25.02.2021
----------------------------------	------------------------------------

W.A.No.1501 of 2015
and M.P.No.1 of 2015

Bonfiglioli Transmissions Private Limited,
Represented by its Head Commercial Mr.T.K.Ravi,
Plot No.AC7-Ac 11, Sidco Industrial Estate,
Chennai - 600 044. .. Appellant/Petitioner

-vs-

Assistant Commissioner (CT),
Tambaram-1 Assessment Circle,
Chennai - 600 045. .. Respondent/Respondent

Appeal under Clause 15 of the Letters Patent Act to set
aside the order dated 15.07.2015 made in W.P.No.20179 of 2014.

Prayer: 20179 of 2014: Writ Petition filed under Article 226 of
the Constitution of India praying for a Writ of certiorari to
call for the records on the proceedings of the respondent in
TNGST/0883431/2002-03 & 2003 - 04 CST/ 772273/2001-2002 to 2003-
2004 dated 16.04.2014 issued by the respondent and quash the
same as arbitrary and illegal.

For Appellant : Mr.Joseph Prabakar
For Respondent : M/s.G.Dhanamadhri
Government Advocate (Tax)

JUDGMENT

T.S.SIVAGNANAM, J.

This appeal filed by the writ petitioner is directed
against the order dated 15.07.2015 in W.P.No.20179 of 2014.

2.The appellant filed the writ petition praying for
issuance of writ of Certiorari to quash the notice issued by the
respondent dated 16.04.2014 demanding penal interest under
Section 24(3) of the Tamil Nadu Value Added Tax Act, 2006

[hereinafter referred to as "TNVAT Act"] on the ground that there was belated payment of sales tax by the appellant.

3. The appellant is a registered dealer under the provisions of the TNVAT Act and the Central Sales Tax Act, 1956 [hereinafter referred to as "CST Act"]. The appellant is engaged in the manufacture of industrial gear motor, gear boxes with their Unit situated in SIDCO Industrial Estate, Thirumudivakkam, Chennai - 600 044. The appellant applied to the State Industries Promotion Corporation of Tamil Nadu Limited [SIPCOT] for issuance of eligibility certificate under the Sales Tax Deferral Scheme by application dated 30.08.2000. By letter dated 20.05.2002, the SIPCOT intimated the appellant that their application has been favourably considered for issuance of eligibility certificate and requested the appellant to execute the agreement and other document with the Commercial Taxes Department. In terms of the eligibility certificate which was issued on 17.05.2002, the deferral period was from 01.07.2000 to 30.06.2009. The appellant executed an agreement dated 21.06.2002, with the respondent Department for deemed payment of deferred sales tax. The deferral period mentioned in the agreement was from 01.05.2002 to 30.04.2011. One of the condition in the agreement which would be of relevance to decide the dispute on hand is condition Nos.1 and 1a, which reads as follows:

"1. The Sales Tax due on the sale of the products manufactured by them in their Factory at Plot No.AC7 & AC11, SIDCO Industrial Estate, Thirumudivakkam, Sriperumbudur Taluk, Kancheepuram Dist. Shall be deemed to have been paid to the Assessing Authority and identical amount shall be treated as Government loan.

a. In the case of new Industries, it shall be for the full tax, subject to ceiling specified in Eligibility Certificate (i.e.) not exceeding Rs.1,725.46 Lacs (Rupees One thousand seven hundred twenty five lacs and forty six thousand only)"

4. Condition No.8 states that in case of default of any of the conditions mentioned in paras 3, 4, 5, 6 & 7, the deferral shall be cancelled for the entire period for which it was granted. Condition No.12 states that tax etc. or penalty is levied/leviable on taxable "turnover suppressions". Turnover suppression has been defined to mean the taxable turnover not shown or not declared as such in the monthly returns filed by the appellant and in cases of turnover suppression, the dealer was not eligible for the loan scheme. The respondent issued notice dated 30.05.2013 calling upon the appellant to pay arrears of sales tax both under the CST and the TNGST Act for the period from 2001-2002 to 2003-2004 together with surcharge.

On receipt of the notice, the appellant by letter dated 24.06.2013 pointed out that the amount demanded in the notice includes the Interest Free Sales Tax [IFST] deferral availed and repaid by them and submitted that they remitted tax amount of Rs,61,915/- shown as arrears payable for the year 2001-2002 under the CST Act and requested for dropping further action.

5.The respondent by notice dated 29.08.2013 after receiving the appellant's letter dated 24.06.2013 informed that 'eligible IFST' means that the taxes actually collected by the appellant during the respective assessment years and deferred the payment of tax which have been collected by the appellant for improving their business. Further the appellant is not eligible to avail IFST in respect of transactions where actual collection of taxes had not taken place. The respondent stated that the arrears demanded in the notice dated 30.05.2013 represents the difference of taxes arrived at on account of non-filing of prescribed declaration Forms, due to which the appellant is not entitled to avail IFST and advised the appellant to clear the entire arrears, failing which threatened coercive action. The appellant sent a representation dated 03.09.2013 inter alia disputing the stand taken by the respondent in the notice dated 29.08.2013 and that it is against the letter and spirit of IFST deferral scheme. After referring to clause 12 of the agreement, the appellant contended that the said clause speaks of taxable turnover not shown or declared and in the appellant's case, it is not a case of non-declaration of taxable turnover in the returns and they are entitled for IFST deferral on the entire tax assessed on the taxable turnover declared in the returns. The appellant placed reliance on G.O.Ms.No.500 Industries (MIG-II) Department dated 14.05.1990. The appellant prayed for re-working the sales tax liability and in anticipation of the re-working with a view to buy peace remitted a sum of Rs.3,42,701 by cheque dated 03.09.2013 being the balance tax payable as per the notice after deducting the adhoc payment of Rs.83,35,300/-. After about three months, by notice dated 28.01.2014 the respondent levied penal interest under section 24(3) of the TNGST Act being a sum of Rs.1,08,88,487/-.

6.On receipt of the notice, the appellant sent their objections dated 14.02.2014 pointing out that they have not been given an opportunity to make their submissions before issuing the notice demanding penal interest which is in violation of the principles of natural justice. The appellant referred to the circular issued by the Principal Commissioner and Commissioner of Commercial Taxes dated 20.04.2001 which mandates the notice to be issued before imposing any penalty. Referring to the decision of the Hon'ble Supreme Court in the case of Commissioner of Central Excise, Bolpur vs. Ratan Melting & Wire Industries [2008 (231) ELT 22 (SC)], it was stated that the

circulars are binding on the Department. Reliance was also placed on the decision of this Court in Millennium Motors vs. Commercial tax Officer, Coimbatore [2011 (39) VST 319 (Mad)], wherein the Court interfered with an order levying penal interest without issuing notice. The stand taken by the appellant in their letter dated 03.09.2013 was reiterated and it was submitted that the amount payable from the year 2002-03 and 2003-04 are covered under IFST deferral and requested to adjust the amount from the adhoc payment made by them and without considering the said request, interest has been demanded without noting the fact that the appellant has a reserve of IFST amount sanctioned by SIDCO. The appellant requested fifteen days time to verify as to the correctness of the amount of arrears, the date of payment, the number of days delay to enable them to submit detailed objections.

7.The respondent on receipt of the appellant's objections dated 14.01.2014 sent a notice dated 26.02.2014 stating that the appellant's request for granting fifteen days time for filing objection is granted and the appellant can also appear for personal hearing at the time of filing the objections. The appellant filed their objections dated 11.03.2014 reiterating the earlier stand contending as to how the demand for penal interest is not sustainable. The respondent issued notice dated 16.04.2014 demanding penal interest as intimated to the appellant by notice dated 28.01.2014. This notice was impugned in the writ petition. The learned Single Bench dismissed the writ petition by the impugned order. Aggrieved over the same, the appellant has preferred this appeal.

8.Mr.Joseph Prabakar, learned counsel appearing for the appellant submitted that the learned Single Bench ought to have considered that the respondent has proceeded solely on the premise that 'eligible IFST' would mean the taxes actually collected during the respective assessment years and erroneously concluded that the appellant is not eligible to avail IFST deferral in respect of transactions where actual collections did not take place. Further, it is submitted that the respondent erroneously held that the deferral scheme would not apply to the amount of differential tax demanded by the authority after the close of the respective financial year. Further, it is submitted that in terms of the agreement, the appellant is eligible for deferral and full tax subject to the ceiling specified in the eligibility certificate, i.e. not exceeding Rs.1725.46 lakhs. Further by referring to clause 12 of the agreement, it is submitted that the agreement refers to 'taxable turnover not shown or declared' to be ineligible for the deferral, however, in the appellant's case, the sale transactions have been duly declared and the monthly returns have been filed mentioning the transaction as sale against Form

C/Form H. Therefore, it is submitted that the appellant is entitled for IFST deferral on the entire tax assessed on the taxable turnover declared in the returns including the turnover relating to differential tax arising out of non-submission of Form C/Form H and incorrect adoption of rate of tax. Further, it is submitted that there is no delay in remittance of tax and the demand for penal interest is unjustified. Without prejudice, it is submitted that the computation of interest itself is incorrect. Therefore, it is submitted that the order which is impugned in the writ petition demanding penal interest was liable to be set aside.

9.M/s.Dhanamadhri, learned Government Advocate (Tax) appearing for the respondent submitted that the 'eligible IFST' means that the taxes actually collected by the dealers and declared in the monthly returns filed by them, during the respective years and deferred in the payment of taxes, which had been actually collected by them for improving their business. It is further submitted that the appellant is not eligible for IFST in respect of transactions where actual collection of taxes had not taken place. The arrears of tax demanded by the respondent in the notice dated 30.05.2013 actually represents the difference of taxes arrived at on account of the non-filing of prescribed declaration Forms, namely, Form C and Form H, etc., owing to which the appellant is not entitled to avail the IFST scheme. Further, it is submitted that the liability to pay interest under section 24(3) of the TNGST Act is automatic and no notice is required to be issued before demanding interest. After referring to clause 12 of the deferral agreement, it is submitted that 'turnover suppression' means the taxable turnover not shown or not declared as such in the monthly returns filed by the dealer and consequently they are not eligible for the IFST deferral scheme. Further, it is submitted that the same analogy would apply to the turnover relating to transactions not covered by Form C and Form H declarations, for which, taxes had not been collected and not declared in the monthly returns as such and therefore, rightly held to be not eligible for IFST deferral scheme.

10.Heard Mr.Joseph Prabakar, learned counsel appearing for the appellant and M/s.G.Dhanamadhri, learned Government Advocate (Tax) appearing for the respondent.

11.The dispute between the appellant assessee and the Department actually lies in a very narrow campus, but has been blown out of proportion partly due to the confusion arising in the minds of the Assessing Officer and partly due to how the appellant assessee understood the issue. The undisputed fact being that the application submitted by the appellant for grant of eligibility certificate was favourably considered by the SIPCOT as duly intimated by letter dated 20.05.2002. The

eligibility certificate initially granted was for the period from 01.07.2000 to 30.06.2009. Based on the certificate, the appellant was eligible for deferral of sales tax for a sum not exceeding Rs.1725.46 lakhs under the deferral scheme for nine years from the month in which the appellant's unit commenced its commercial production, i.e. from 01.07.2000 to 30.06.2009. In terms of clause 5.5, the appellant was required to enter into an agreement with the respondent, which condition was complied with by the appellant and the agreement was signed between the parties on 21.06.2002. We find from the agreement that the deferral period is as follows:

Deferral Period	Financial year of repayment
01/05/2002 to 31/03/2003	01/05/2011 to 31/03/2012
01/04/2003 to 31/03/2004	01/04/2012 to 31/03/2013
01/04/2004 to 31/03/2005	01/04/2013 to 31/03/2014
01/04/2005 to 31/03/2006	01/04/2014 to 31/03/2015
01/04/2006 to 31/03/2007	01/04/2015 to 31/03/2016
01/04/2007 to 31/03/2008	01/04/2016 to 31/03/2017
01/04/2008 to 31/03/2009	01/04/2017 to 31/03/2018
01/04/2009 to 31/03/2010	01/04/2018 to 31/03/2019
01/04/2010 to 31/03/2011	01/04/2019 to 31/03/2020
01/04/2011 to 30/04/2011	01/04/2020 to 30/04/2020

12. In terms of clause 1 of the agreement, the sales tax due on the sale of the products manufactured by the appellant in their factory shall be deemed to have been paid to the assessing authority and identical amount has to be treated as Government loan. This is in effect is the sum and substance of the deferral scheme. So far as the appellant was concerned, it being a new industry, the loan was for the full tax subject to ceiling specified in the eligibility certificate i.e. not exceeding Rs.1725.46 lakhs, which being the upper ceiling limit. The method of repayment is as per clause 3. A charge on the appellant's property has been created in favour of the Government in terms of clause 4 and other conditions, which the appellant is required to comply, have been set out in clauses 5 to 7. In terms of clause 8, if there is any default in the conditions stipulated in clauses 3, 4, 5, 6 & 7, the deferral is liable to be cancelled. In terms of clause 11, penal interest of 24% per annum will be charged for any default in repayment of instalments due to the Commercial Taxes Department. As noted above, the terms of payment have been set out in clause 3 of the agreement. Clause 12 also speaks of circumstances under which the appellant would not be eligible for the IFST deferral loan scheme. This appears to be a separate condition apart from

condition No.8 which provides for cancellation of the entire period of deferral in the event of violation of clauses 3 to 7 of the agreement. There is no allegation against the appellant that they have violated any of the clauses 3 to 7 of the agreement. The stand of the respondent hinges upon the interpretation to clause 12, which reads as follows:

"12.Tax etc. or penalty levied/leviable on taxable turnover suppression [for the purpose of this clause the term "turnover suppressions" means the taxable turnover not shown or not declared as such in the monthly returns filed by the party of the second part] are not eligible for the loan scheme."

13.In terms of the above clause, tax or penalty levied/leviable on taxable turnover suppression are not eligible for loan scheme. Turnover suppression has been defined to mean taxable turnover not shown or not declared as such in the monthly returns filed by the appellant. It is not in dispute that the appellant has filed their monthly returns which has reflected all the transactions. In respect of certain transactions the appellant has declared in the monthly returns as 'Sale against Form C', 'Sale against Form H' and in respect of certain transactions, incorrect rate of tax was adopted. The demand of penal interest flows from the demand dated 29.08.2013. The appellant had been diligently prosecuting the matter, in the sense promptly submitting their objections as and when notices were issued by the respondent. Though the appellant had been doing so by sending reply dated 24.06.2013, 03.09.2013, 14.02.2014 and 11.03.2014, they have not been favoured with a speaking order, nor provided an opportunity of personal hearing, though sought for. Before issuance of notice demanding penal interest, the appellant was not issued with any notice. The interpretation sought to be given by the respondent that no notice is required for levying penal interest under section 24 (3) may not be right in the light of the stand taken by the appellant. What is crucial in the case on hand is whether clause 12 of the agreement could have been invoked by the respondent to make a demand and consequently, demand penal interest.

14.As noticed above, if there is a turnover suppression, the appellant would not be eligible for the loan scheme. Turnover suppression has been defined to mean taxable turnover not shown or not declared as such in the monthly returns filed by the appellant. It is not in dispute that the appellant has filed the monthly returns and has shown the taxable turnover. The revenue would contend that the appellant is not eligible to avail IFST deferral scheme in respect of taxes where actual collections did not take place owing to sales effected by use of

Form C and Form H declarations. Therefore, the question would be as to whether on account of the appellant effecting transactions by use of Form C and Form H declarations, can it be stated to be a turnover suppression. Prima facie, in our view it cannot amount to suppression as such transactions are permissible under the Act. Eligibility or ineligibility would have to be decided by interpreting all the conditions in the agreement as well as in the eligibility certificate. Therefore, the respondent has proceeded on a wrong footing. If the respondent has to make out a case of turnover suppression for invoking clause 12, then the respondent should establish that the turnover has not been shown in the monthly returns filed by the dealer.

15. It is not in dispute that the turnover has been shown and the turnover has been shown specifically that it is sale against Form C, sale against Form H. Hence, it is not a case where the appellant has not declared the sales in its monthly returns. If according to the respondent, the quantum of eligibility would be directly relatable to the actual tax collected by the appellant, then it is totally a different matter. This also needs to be decided by interpreting the terms and conditions of the agreement and those in the eligibility certificate. The appellant's case is that the limit mentioned in the eligibility certificate as well as in the agreement is Rs.1725.46 lakhs and this being mentioned as a eligibility limit, the appellant would contend that they are eligible for the IFST deferral scheme. The respondent without noting the complexity of the matter in a casual manner has dealt with the case resulting in passing of the order/notice impugned in the writ petition. Apart from the objections regarding the sustainability of the stand of the respondent that there is turnover suppression, the appellant without prejudice has also disputed the computation of interest. In spite of objection given by the appellant, the respondent has not considered the same and has not passed any speaking order. In this regard, it is relevant to take note of the stand of the appellant wherein they have stated that they are eligible to take an amount of Rs.87,39,916/- under the deferral scheme under the reserve amount of Rs.348 lakhs, the interest payable would work out to Rs.2,51,260/- only and not Rs.1,08,88,487/-.

16. The argument of the respondent is that the liability to pay interest is automatic in terms of section 24(3) of the TNGST Act. Therefore, no notice is necessary for levying penal interest. A distinction has to be drawn in the appellant's case owing to the fact that the appellant disputes the allegation of the Department that they are a defaulter, i.e. there has been a turnover suppression. Unless the said issue is decided, the aspect of delay in payment of taxes cannot be decided. Only

after deciding the delay which is alleged to have occurred, interest can be levied. Therefore, in the factual circumstances of the case, issuance of notice on the appellant was absolutely necessary.

17. For all the above reasons, this Court is convinced to hold that the respondent has failed to address the crucial issues in spite of the appellant raising objections and mechanically proceeded to issue the notice demanding penal interest. Hence, this Court is inclined to interfere with the notice issued by the respondent which was impugned in the writ petition dated 16.04.2014 and remand the matter back to the Assessing Officer to take a fresh decision in the matter after affording an opportunity to the appellant to submit detailed objections and after giving an opportunity of personal hearing to the authorized representative of the appellant.

18. In the result, the writ appeal is allowed, consequently the proceedings/notice issued by the respondent dated 16.04.2014 is quashed and the matter is remanded to the respondent for fresh consideration in accordance with law with due opportunity to the appellant as mentioned above. The decision shall be in accordance with law, uninfluenced by any of the observations made in this judgment which at best can be only a prima facie view and it is for the respondent to exercise powers in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

cse

To

The Assistant Commissioner (CT),
Tambaram-1 Assessment Circle,
Chennai - 600 045.

+1cc to Mr. Joseph Prabakar, Advocate, S.R.No. 11442
+1cc to the Special Government Pleader (Taxes), S.R.No. 12289

W.A.No.1501 of 2015
and M.P.No.1 of 2015

KJ (CO)
GN (22/03/2021)