IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.7243 of 2006
and
W.P.M.P.No.7952 of 2006

M/s.Udhayam Colours,
Rep., by Mr.S.Muthusamy, Partner,
152, Murugampalayam,
Iduvampalayam (P.O),
Tirupur, Coimbatore District. ... Petitioner

-vs-

1.The Joint Commissioner (CT),
(Revision Petition),
O/o The Commissioner of Commercial Taxes,
Chepauk, Chennai-5.

2.The Deputy Commercial Tax Officer,
Tirupur (Rural) Circle,
Tirupur, Coimbatore District. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the 1st respondent in R.P.No.J1/268/2004 and quash the order dated 30.12.2005.

For Petitioner : Mr.M.Hariharan

For Respondents: Mr.K.Veluchamy,
Government Advocate

ORDER

The order impugned dated 30.12.2005 passed by the first respondent is under challenge in the present writ petition.

2.The learned counsel appearing on behalf of the petitioner made a submission that the first respondent cannot collect any interest under Section 24(3) of the Tamil Nadu General Sales Tax Act, 1959 and the said position is confirmed by this Court in various judgments.

3.In respect of the impugned order, the learned counsel for the petitioner solicited the attention of this Court that action was initiated against several dealers and those dealers also filed writ petitions and the said writ petitions were allowed. In respect of the very same impugned order, this Court considered the issues in respect of other dealers and allowed the writ petitions on 23.03.2021 in the case of M/s.Talent Dyeing and Ors. vs. Joint Commissioner (CT), Chennai and Anr. [W.P.Nos.7310 of 2006 etc., batch]. The relevant portions of the order dated 23.03.2021 are extracted hereunder:-

> "8.There is no dispute, that the tax was paid by the petitioner before the Assessment orders were passed and the respective Assessment order indicates that there is no tax due from the petitioner. After the Assessment orders were passed, a notice came to be issued to the petitioners seeking to levy Penal Interest under Section 24(3), on the ground, that although the petitioners had paid taxes and surcharge belatedly, they were liable to pay penalty under Section 24(3) of the TNGST Act. Under these circumstances, the petitioners along with others filed application for Revision Petition under Section 33 of the TNGST Act before the Deputy Commissioner of Commercial Taxes which came to be disposed by a Common Order holding that the petitioners were liable to pay interest. Against this aforesaid order a second Revision Petition was filed before the Joint Commissioner of Commercial Taxes under Section 35 of the TNGST Act which has culminated in the impugned orders. The impugned orders proceed on the identical reasonings. The relevant portion of the impugned order reads as under:
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> > "4.I have examined the contentions of the petitioner as stated in the grounds of revision already filed with reference to the connected records. The learned Deputy Commissioner in his order dated 03.08.2004 have pointed out that the process of dyeing the colour shade passed on to the fabrics constitute sale of materials used in dyeing under the works contract act as per the case decisions from the STAT, Main Bench, in State appeal 728 of 2001 and cross objections No.79/2003 dated 23.12.2003. (State of Tamil Nadu Vs. Farida Prime Tannery Case).

The learned Deputy Commissioner further pointed out that the dyeing contract is taxable under works contract act and the date on which annual return was due there is laibility to tax arises. The quantification of taxes due is at the time of final assessment only but the penal interest could be demanded even for failure to pay advance payment of tax under Section of 13 of the TNGST Act and dismissed the revision petitions.

5.I quite agree with the views expressed by the learned Deputy Commissioner. The Department is assessing the dying contract as taxable from the beginning where as petitioner like dealers are contenting that their transaction is not laible to tax, the issue has been taken from Appellate Assistant Commissioner to High Court of Madras. There are certain legal decisions favorable to the department and also to the dealers.

The petitioners have not paid legally due tax to the department in time. The levy of penal interest for belated payment of tax is reasonable and justifiable. The Division Bench of the High Court of Madras in the case of Indian Commerce and Industries Company (P) Ltd, reported in 129 STC 509 have held that the levy of interest is justified and automatic. Therefore, the levy made by the Assessing Officer under Section 24(3) of the TNGST Act is correct and is in order.

I am of the view that no interference is required in the orders of the learned Deputy Commissioner. The order passed by the Assessing Officer and also Deputy Commissioner are sustained.

In the result, six revision petitions are dismissed.”

9.The impugned order seems to indicate that the petitioner has not paid the advance tax under Section 13 of the TNGST Act and therefore the petitioner was liable to pay Penal Interest under Section 24(3) of the TNGST Act. The issue relating to payment by the Hon'ble Supreme Court in EID Parry (India) Ltd Vs. Assistant Commissioner of

Commercial Taxes, Chennai, [2005] 12 STC 141 this decision has been relied in the two other decisions which has been cited above.

10.In the light of the decision of the supreme Court in EID Parry (India) Ltd Vs. Assistant Commissioner of Commercial Taxes, Chennai, [2005] 12 STC 141, these Writ Petitions have been allowed.

11.Accordingly, these writ petitions stand allowed. No costs. Consequently, connected Miscellaneous Petitions are closed."

4.In view of the orders passed in W.P.Nos.7310 of 2006 etc., batch, the impugned order passed by the first respondent in R.P.No.J1/268/2004 dated 30.12.2005 is quashed and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

abr
To

1.The Joint Commissioner (CT),
(Revision Petition),
O/o The Commissioner of Commercial Taxes,
Chepauk, Chennai-5.

2.The Deputy Commercial Tax Officer,
Tirupur (Rural) Circle,
Tirupur, Coimbatore District.

+1cc to Mr.M.Hariharan, Advocate Sr.29591
+1cc to the Special Government Pleader Sr.29673

W.P.No.7243 of 2006

pmk[co]
srg 27/07/2021