IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P.Nos.7310 to 7313 of 2006 and 4102 and
4935 & 4936 of 2006
and
W.M.P.Nos.8038, 8040, 8042, 8044, 5313 of 2006

1.M/s.Talent Dyeing,
Athuvali Thottam,
Anaipalayam, Sirupuluvapatti,
Tirupur, Coimbatore District.
Rep by its Partner. ... Petitioner in
W.P.Nos.7310 to 7313 of 2006

2.M/s.Brilliant Dyers,
403, S.K.Garden,
Vannan Thottam, Veerapandi Post,
Tirupur, Coimbatore District.
Rep by its Partner. ... Petitioner in
W.P.Nos.4102 of 2006

3.M/s.Sivasakthi Dyeing Factory,
620, Sivasakthi Garden,
Veerapandi (P.O),
Tirupur, Coimbatore District.
Rep by its Partner. ... Petitioner in
W.P.Nos.4935 of 2006

4.M/s.Gowtham Dyers,
272, Kuppandampalayam,
Veerapandi Post, Tirupur,
Coimbatore District,
Rep by its Partner. ... Petitioner in
W.P.Nos.4936 of 2006

Vs.

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

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

PRAYER in W.P.No.7310 of 2006:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records of the 1st respondent in R.P.No.J1/281/2004, quash the order dated 30.12.05.

PRAYER in W.P.No.7311 of 2006:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records of the 1st respondent in R.P.No.J1/282/2004, quash the order dated 30.12.05.

PRAYER in W.P.No.7312 of 2006:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records of the 1st respondent in R.P.No.J1/283/2004, quash the order dated 30.12.05.

PRAYER in W.P.No.7313 of 2006:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records of the 1st respondent in R.P.No.J1/284/2004, quash the order dated 30.12.05.

PRAYER in W.P.No.4102 of 2006:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records of the 1st respondent in R.P.No.JJ2/43/2005, quash the order dated 14.10.05.

PRAYER in W.P.No.4935 of 2006:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records of the 1st respondent in R.P.No.JJ2/27/2005, quash the order dated 06.12.2005.

PRAYER in W.P.No.4936 of 2006:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records of the 1st respondent in R.P.No.J1/269/2004, quash the order dated 30.12.05.

For Petitioner : Mr.S.Raveekumar
(in all W.Ps)
For Respondent : Mr.R.Swarnavel
(in all W.Ps) Government Advocate

C O M M O N O R D E R

The petitioner has challenged the impugned orders seeking to reject the request of the petitioner under revision. By the impugned order, the request of the petitioner for waiver of interest under Section 24(3) has been rejected for the following Assessment years 1991-1992 to 1995-1996.

2.It is submitted that before the Assessment orders came to be passed the petitioner had also paid the tax due and therefore there is no question of charging the Penal interest under Section 24(3) of the Tamil Nadu General Sales Tax Act, 1959. It is submitted that under Section 24(3) Penal Interest can be levied only if any amounts remains unpaid after the date specified for payment as referred to Sub-Section 1 or in the order permitting payment in installment, a dealer or the person shall pay in addition to the amount due interest at the rates.

4.The case of the Revenue appears to be that the petitioners were engaged in works contract within the meaning of Section 3(b) of the TNGST Act and therefore the petitioner was required to add labour and other charges equivalent to 50% to the value of the works contract, which the petitioner had paid. Since the amount was not paid by the petitioner under Section 12 of the TNGST Act in time read with relevant Rules. The department was entitled to recover levy penal interest under Section 24(3) of the TNGST Act, 1959.

5.The learned counsel for the petitioner placed reliance on the decisions of this Court in:

(i)M/s.Pantone Dyers and other Vs. The Joint Commissioner (CT) (Revision Petition), Office of Commissioner of Commercial Taxes and other in W.P.Nos.6304 & 6305, 6342& 6343 of 2006 dated 18.06.2018 and

(ii)M/s.B.N.T.Innovations Private Limited Vs. The Assistant Commissioner (CT) FAC in W.P.Nos.17869 to 17871 of 2015 dated 14.06.2016 and

(iii)M/s.Subramanian & Co Vs. The Commercial Tax Officer and others in W.P.No.5583 of 2008 dated 09.02.2021.

6.The learned counsel for the petitioner submits that the issue is squarely covered by the decision of the Hon'ble Supreme Court in EID Parry (India) Ltd Vs. Assistant Commissioner of Commercial Taxes, Chennai, [2005] 12 STC 141 which has been followed in the other decisions.

7.I have considered the arguments advanced by the learned counsel for the petitioner and the respondent.

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:

> 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).
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> 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.
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> 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.
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> 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.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To
1.The Joint Commissioner (CT),
(Revision Petition),
Office of Commissioner of Commercial Taxes,
Chepauk, Chennai - 5.

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

+1 cc to Spl Government Pleader(Taxes) Sr.No. 19236,19228,
19226,19227

W.P.Nos.7310 to 7313 of 2006 and 4102 and
4935 & 4936 of 2006
and W.M.P.Nos.8038, 8040, 8042, 8044, 5313 of 2006

kv co
A.SK(28.06.2021)