IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 5583 of 2008
and
M.P. No.1 of 2008
(Through Video Conferencing)

M/s.Subramanian & Co,
No.A-2, III Phase,
Guindy Industrial Estate,
Chennai - 600 002 ... Petitioner

Vs

1. The Commercial Tax Officer,
Valluvarkottam Assessment Circle,
Chennai - 600 006.

2. The Deputy Commissioner (CT),
Chennai (Central) Division,
PAPJM Buildings,
Chennai - 600 006. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the first respondent in TNGST/110752/94-95 quash the impugned proceedings dated 31/10/2007 being contrary to the decision of the Full Bench of the Apex Court in 122 STC 410 & 141 STC 12.

For Petitioner : Mr.V.Sundareswaran
For Respondents : Mr.R.Swarnavel
Government Advocate

ORDER

In this writ petition, the petitioner has challenged in position of penalty under section 24 (3) of the Tamil Nadu General Sales Tax Act, 1959 (TNGST Act,1959). The petitioner has challenged the levy primarily on the ground that the petitioner had failed to pay tax on the sale of REP license during the assessment year 1994-1995 under a bonafide impression that sale of REP license was not liable to tax.

2. During the period of dispute, the petitioner sold REP license for a value of Rs.11,29,205/-. Subsequently, after the Hon’ble Supreme Court rendered its decision in Vikas Sales Corporation and Another Vs Commissioner of Commercial Taxes and Another, [1996] 102 STC 106, the petitioner paid the

proportionate tax on the sale of REP license for a sum of Rs.1,11,983/- on 26.07.1996. Meanwhile, an assessment order was passed on 28.09.1998 after the payment of the aforesaid amount to the credit of the government towards the tax liability.

3. The impugned order/communication is challenged primarily on the ground that the Hon'ble Supreme Court in EID Parry (India) Ltd Vs Asst Commissioner of Commercial Taxes, Chennai, (2005) 12 STC 141 has held that, in absence of any assessment, no demand for interest under section 24 (3) of the TNGST, 1959 is sustainable.

4. The learned counsel for the petitioner also placed reliance on the decisions of this Court in

(i) M/s.General Industrial Leathers Pvt. Ltd., Vs The Joint Commissioner (CT) (RP), Chennai and another in W.P.No.19108 of 2005.

(ii) M/s.Pantone Dyers Vs The Joint Commissioner (CT), Chennai and another in W.P.Nos.6304 etc of 2016.

(iii) M/s.Global Poly Bags Industries (P) Ltd., Vs The Commercial Tax Officer-I, Virudhunagar in W.P (MD)No.13042 of 2009.

5. That apart, he also placed reliance on the decision of this Court rendered in M/s.Sara Leathers Vs The Joint Commissioner of Commercial Taxes (RP) and others in W.M.P.No.15621 of 2006 in W.P.No.15848 of 2006.

6. Per Contra, the learned counsel for the respondents/commercial tax department submits that this very aspect relating to payment of interest was considered by this Court in Tvl.K.H.Shoes Ltd., Vs The Joint Commissioner of Commercial Taxes (RP) in W.P.Nos.33192 & 33193 of 2005 and by an order dated 28.08.2019, the Court upheld the demand for interest under Section 24(3) of the TNGST Act, 1959.

7. The learned counsel also drew my attention to recent decision of the Madhya Pradesh High Court in Indian Oil Corporation Ltd., Vs State of Madhya Pradesh, 14 GSTL 10, wherein, it was held that interest will be payable only if the returns are filed and assessments are completed and where no returns were filed, no demand was there, and interest cannot be admissible.

8. The learned counsel for the respondents placed reliance of the decision of this Court in Sakthi Sugars Ltd., Vs Assistant Commissioner of Commercial Taxes and others, (1985) 59 STC (52), wherein, it has been held that interest under the tax enactment is automatic if there is a default.

9. I have considered the arguments advanced by the learned counsel for the petitioner and the respondents.

10. In this case, the petitioner has paid the tax on the sale of REP license for a sum of Rs.11,29,205/- for the period between 1994-1995 in view of the pending litigation before the Hon'ble Supreme Court as to whether the REP license was goods or actionable claim liable to tax or not. However, the respondent claims differential (final) tax was payable on Rs.11,66,486/- and not on Rs.11,29,205/-.

11. The proportionate interest on the delayed payment of tax as per the Impugned Demand Notice dated 31.10.2007 is Rs.35,834/-. After Assessment Order dated 31.03.2003 was passed by the Deputy Commercial Officer, Assessment Circle, Chennai long after the petitioner had paid the tax during July 1996.

12. The issue is covered in favour of the petitioner as per the decision of the Hon'ble Supreme Court in EID Parry (India) Ltd., Vs Assistant Commissioner of Commercial Taxes, Chennai, [2005] 12 STC 141. The Hon'ble Supreme Court after considering the scope of Section 24 of the TNGST Act, 1959 held as under:-

> "Under section 24(1) if the tax has been assessed or has become payable under the Act, then the payment has to be made within the said time as may be specified in the notice of assessment and tax under section 13(2) has to be paid without any notice of demand. However, as seen above, the tax under section 13(2), in the absence of any determination by the assessing authority, is tax as per the returns. If default is made in payment of such tax then interest becomes payable under the Act. In the present case, it is an admitted position that tax as per the monthly return had been filed. Interest becomes payable under section 24(3) on an amount remaining unpaid after the date specified for its payment under sub-section (1) of section 24. As seen above sub-section (1) of section 24 deals with an assessed tax or tax which has become payable under the Act. In cases covered by section 13(2) tax must be paid without any notice of demand. But as stated above under section 13(2) tax is to be paid "on the basis of such returns". Tax as per the returns has admittedly been paid. If the returns were incomplete or incorrect as now claimed the assessing authority had to determine the tax payable and issue a notice of demand. In the absence of any assessment, even provisional, and a notice of demand no interest would be payable under section 24(3).In this case, it is an admitted position that as soon as the revised return was filed the appellants paid the tax as per the revised return. Therefore, they paid the tax even before the final assessment took place.

> Thus, the claim for interest, under section 24(3) form the date that the advances were paid to the sugarcane growers is not sustainable. There is no provision under the Act which permits charging of interest unless and until there has been a provisional assessment and a notice of demand prescribing the period within which the tax was to be paid."

13. The reasoning of the Hon'ble Supreme Court in EID Parry (India) Ltd., Vs Assistant Commissioner of Commercial Taxes, Chennai, [2005] 12 STC 141, indicates that interest cannot be levied even if there is a short payment of tax if tax was paid in accordance with the returns filed. In this case, the petitioner had filed returns in time. However, no tax was paid on sale of REP license. The petitioner paid tax before the issue of notice and assessment order in the light of the decision of the Hon'ble Supreme Court in Vikas Sales Corporation (referred to supra). That being the case, the issue is governed by the decision of the Hon'ble Supreme Court in EID Parry India Ltd., (referred to supra).

14. Though the decision of this Court in Sakthi Sugars Limited., (referred to supra) appears to be in favour of the respondents/revenue, it is noticed that the said decision has not been referred to the decision of the Hon'ble Supreme Court in EID Parry India Ltd., (referred to supra).

15. Accordingly, this Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

arb

Notes:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Commercial Tax Officer,
Valluvarkottam Assessment Circle,
Chennai - 600 006.

2. The Deputy Commissioner (CT),
   Chennai (Central) Division,
   PAPJM Buildings,
   Chennai - 600 006.

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.7909.
+1cc to the Government Pleader, S.R.No.7297.

W.P. No. 5583 of 2008
and
M.P. No.1 of 2008

RP(CO)
CSR 30.03.2021