



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. NOS.22746 & 22747 OF 2005
WMP.NOS.24794 & 24795 OF 2005
3366 & 3362 OF 2021

India Cements Limited
Represented by its Company Secretary
G.Balakrishnan

...Petitioner

Vs.

1. The Assistant Commissioner (CT),
Fast Tract Assessment Circle II,
P.A.P.J.M. Buildings, 4th Floor,
Chennai-600006

2. The State of Tamil Nadu
represented by the
Secretary to Government
Department of Commercial Taxes
and Religious Endowments
Fort St. George, Chennai-600009

...Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to Writ of certiorari calling for the records on the files of the first respondent herein in TNGST/44172/69-70 and TNGST/44172/70-71 dated 20.06.2005 and quash the proceedings of the first respondent herein in TNGST/44172/69-70 and TNGST/44172/70-71 dated 20.06.2005.

For Petitioner : Mr.Sriprakash

For Respondents : Mr.TNC Kaushik
Government Advocate

C O M M O N O R D E R

The challenge is to two orders, both dated 20.06.2005 levying interest under the provisions of Section 24(3) of the Tamil Nadu General Sales Tax Act, 1959 (in short 'Act') in respect of assessments made for the periods 1969-70 and 1970-71.



2. The aforesaid orders have had a checkered trajectory and the events leading to passing of the same are set out below:

(i) On 15.07.1971 and 28.04.1972, orders of assessment were passed for the two periods in question making an addition of freight charges to the taxable turnover.

(ii) On 07.06.1972 and 13.09.1972, the orders of assessment were set aside by the appellate authority.

(iii) In appeal before the Board of Revenue at the instance of the revenue, an order was passed on 20.09.1976 restoring the orders of assessment.

(iv) On 30.10.1976, the Assessing Authority passes orders of revision pursuant to the order of the Board of Revenue.

(v) In the interim, the order of the Board of Revenue had come to be challenged by the petitioner by way of Tax Case (Revision) before the High Court in T.C.No.437 and 438 of 1976 that came to be dismissed on 08.11.1976.

(vi) On 10.11.1976 notice came to be issued by the Assessing Officer raising a demand consequential upon assessment.

(vii) On 29.11.1976, this Court granted certificate for leave challenging the dismissal of the Tax Case (revision).

(viii) On 21.02.1977 interim orders had been obtained from the Supreme Court in the Civil Appeals filed by the petitioner.

(ix) On 23.12.2081, this Court held in the case of Ramco Cement Distribution Co. (P) Ltd. Vs. The State of Tamil Nadu (51 STC 171) that freight charges were not taxable under the provisions of the Act.

(x) On 20.10.1992, the Division Bench order in Ramco (supra) came to be reversed by the Supreme Court in a judgment reported in 1993 (1) SCC 192.

(xi) Civil appeals filed by the petitioner, as a consequence of the judgment above, were dismissed.

(xii) On 04.06.1996, notice was issued by the Assessing Officer calling upon the petitioner to remit the tax demand that was payable consequent upon the dismissal of the civil appeals



(xiii) On 15.07.1996, the amount of tax was remitted and the demand that arose as early as on 15.07.1971 and 28.04.1972, found fruition.

(xiv) On 24.02.1999, the petitioner was asked to show cause why interest not be levied under Section 24(3) and objections came to be filed for the aforesaid proposal on 22.03.1999.

(xv) After a hiatus of nearly six years, personal hearing notice was issued on 04.01.2005 and a further objection raised by the petitioner on 01.02.2005. The impugned orders came to be passed on 20.06.2005.

3. These writ petitions have been filed in 2005 and are being disposed by way of the present order. One of the grounds raised by the petitioner is to the effect that the orders of assessment quantifying the tax demand are to be accompanied by a statutory form making a demand upon the petitioner to remit the same. The order passed by the respondent on 30.10.1976, consequent upon the order passed by the Board of Revenue, states in conclusion that a Form in B-3 'will issue' and according to the petitioner, such Form had not come to be issued at all. Thus, the revenue had been asked to produce the files to evidence service of the statutory B-3 Form upon the petitioner.

4. In counter, originally, filed on 28.11.2019, the revenue has set out the dates for service of the B3 notices upon the petitioner, though no documents have been produced by way of acknowledgement for service of the same.

5. After the elapse of several years, the petitioner has raised additional grounds on 09.02.2021, one to the effect that the demand in this case ought to have been raised in Form B-7 and not B-3, since the two Forms had been prescribed for separate and distinct purposes. While Form B-3 relates to a demand raised upon passing of original assessment order, Form B-7 refers to a demand raised consequent upon a revisional or appellate order. The concerned Rules are Rule 16 and 18 for the issuance of B-3 and the Form is itself titled 'notice of final annual assessment and demand'. In the case of Form B-7, the relevant Rules are 32 to 34 and the Form is titled 'notice of revision of assessment and demand'. Thus, according to the petitioner, these Rules envisage two different Forms for the different situations under which demands could be raised and in this case the correct Form to be issued is B-7 and not B-3. The order of assessment in question is not an original order of assessment but an order passed consequent upon the revision and thus, the applicable Form would be B-7 and not B-3.



6. A counter has been filed wherein the revenue reiterates the issuance of the Form B-3 but makes no mention of Form B-7. The petitioner thus gives up its original line of argument and pursues a new line of argument to the effect that, even assuming that B3 notice had been served upon it, it would have been the incorrect Form as the present situation requires a B7 Form to have been issued.

7. Learned counsel for the petitioner would rely in this regard, on a judgment of the Supreme Court in State of U.P. Vs. Singhara Singh and Others (AIR 64 SC 358), particularly para 7 thereof and learned revenue counsel, per contra, would rely on a decision of a Division Bench of this Court in Sekar Jewellers V. The Tamil Nadu Taxation Special Tribunal (order dated 09.10.2002).

8. The latter decision dealt with levy of interest under Section 24 of the Act and the quantification of the same. At paragraph No.14, reference is made to Forms B3 and B7 as provided for in Rules 16 and 18 and Rules 32 to 34 respectively. At paragraph 15 of the decision, the Bench states that while computing interest under Section 24(3), interest would have to be computed with reference to the dates specified in the original assessment order. As regards the penalty, they refer to the second proviso to Section 24(3) which postpones the collection of penalty till the disposal of appeal or revision as the case may be. As regards interest, the second proviso states that interest shall be calculated on the amount that becomes due in accordance with the final order passed in appeal or revision. The Bench thus states that 'As seen from the above statutory provisions the one and only conclusion that could be reached is that the liability which commenced under Section 24(3) for payment of tax is not snapped but only postponed till the appeal or revision is disposed of and on such disposal the liability emanated from the order of assessment would continue till the same is discharged by making the payment.'

9. In the present case, the issue that arises is as to whether the Form to accompany the order of assessment as specified in the Rules is mandatory or whether Forms B3 and B7 were interchangeable. The statutory scheme as well as Rules and the Forms prescribed are definite to the effect that Form B3 relates to a demand raised in original assessment, whereas B7 form relates to a demand raised in an order of revision. As seen in Sekar Jewellers (supra), whether a demand is raised under Forms B3 or B7 would carry serious ramifications as the quantification of interest in the two scenarios varies. Thus, only the Form, as specific to the situation, is liable to be used. In the present case, the revenue does not state that Form B7 has been issued in this case and in fact, vide additional



counter dated 22.06.2021, sub-para (3) to paragraph 4, they confirm that the demand pursuant to the consequential order, is only in Form 3. Their argument that B7 and B3 forms are interchangeable is not liable to be accepted, since the two Forms are intended for different purpose and have different consequence. With this conclusion, the impugned order fails.

10. The second issue raised is that the sequence of events would reveal unreasonable delay in the proceedings, culminating in impugned order dated 20.03.2005. The judgment of the Supreme Court dismissing the petitioner's civil appeals is dated 06.09.1995 and notice calling upon the petitioner to remit the tax was on 04.06.1996. Thereafter, the notice for levy of interest was on 24.02.1999 and notice for personal hearing only on 04.01.2005.

11. Thus, there is a period of ten years between the judgment of the Supreme Court and the passing of the impugned orders levying interest. This, according to the petitioner, is unreasonable and fatal to the proceedings itself as the respondents, being statutory authorities, are expected to act promptly and without any delay.

12. Learned counsel refers to judgment of the Supreme Court in Commissioner of Trade Tax, U.P. Lucknow Vs. Kanhai Ram Thekedar (4 SCC 472) particularly para 17 thereof holding as follows:

Thus the demand was after nearly four years. There was no demand of interest in the assessment order which, in or opinion, forms part of the assessment order. As the assessment order did not include a claim for interest, the demand for interest had to be made within a reasonable period thereafter. To be noted that for rectification of the assessment order, a limitation period of three years is laid down. Since the demand of interest was made after almost four years, we hold that the demand is not within a reasonable period and the assessee is not liable to pay the interest as demanded. The Department is not entitled to recover the interest from the respondent assessee but is at liberty to recover the amount of interest demanded from the assessing officer concerned who has not taken steps for four years.

13. Though there is no limitation set out in the Act for completion of proceedings under Section 24(3), statutory authorities are expected to complete proceedings as expeditiously as possible unless they are able to establish



special circumstances causing the delay. Neither the original nor the additional counter set out an explanation for the elapse of time. No defence is set forth and that is as well, as the admitted facts and sequence of events speak for themselves. This argument is thus accepted.

14. Another argument advanced by the petitioner is that the remitting of taxes was itself after a bonafide legal dispute in regard to which there was much uncertainty over the years. The dispute came to be settled only in October, 1992. Learned counsel for the petitioner points out that various authorities over the years i.e. between 1971 to 1992, had taken fluctuating views in regard to the legal issue of whether freight to be brought within the ambit of tax and with the jurisdictional High Court holding in favour of the petitioner from 1971 till 1992, when its decision was reversed.

15. Reliance is placed on a decision of this Court in EID Parry India Ltd. Vs. Assistant Commissioner (CT) (126 STC 449). My attention is drawn to the discussion at para 19 onwards till end. The aforesaid decision has become final and the argument of the petitioner in that case was also that its bonafides ought to be taken into account in deciding the applicability of Section 24(3) to the levy of freight charges, including subsidy. After the filing of a return, there had been an unanticipated component of turnover that arose and the petitioner filed a supplementary return disclosing that turnover to tax, remitting the tax thereupon even before the date when the issue came to be decided finally. In such a situation, the Court held that situation did not attract the provisions of Section 24(3) and no interest would be leviable.

16. In response to the petitioners argument, the revenue had contended that the question of bonafides would not be relevant as the provisions of Section 24(3) levying interest are compensatory and mandatory. The very same arguments are adopted by the learned revenue counsel before me now.

17. Reliance is also placed on a decision of the learned Single Judge of this Court in K.H Shoes Ltd. Vs. Joint Commissioner of Income Tax and Another (W.P.Nos.33192 and 33193 of 2005) dated 28.08.2019. In that case, the question that arose was the levy of interest on turnover from the sale of REP licences. This Court notices that there had been much uncertainty on the taxability of the licenses and such uncertainty finally came to be decided by the Supreme Court on 01.05.1996. In such a position, it was concluded that there was no justification for the levy of interest.



18. In the present case, no doubt there was uncertainty, but uncertainty is not a stranger to legal disputes involving tax matters. Moreover, the option was always available for the petitioner, a public limited company, to remit the amount demanded such that the interest liability stood frozen. This has not been done and the amount has been remitted only after its SLPs were dismissed by the Supreme Court.

19. I thus categorically reject the argument of the petitioner to the effect that it was bonafide in its actions and that no interest should be levied in such a case. Reliance on the decision of the learned single Judge in the case of K.H.Shoes is also misconceived. In that case, the Assessing Authorities had themselves kept the assessment orders raising the demand on turnover from sale of REP licences in abeyance and where the orders of assessment are kept in abeyance, there could be no liability to interest under Section 24(3).

20. The last point raised by the petitioner touches upon the aspect of quantification of interest as the rate of interest in this case would only be 1% as against 2%. It is a settled position of law as reiterated in Nagarathinammal Vs. Deputy Commercial Devasthanam Vs. Commercial Tax Officer (67 STC 464) that the applicable law would be that in force as on the date of assessment. No dispute is raised on the position that the provisions of Section 24(3), as it stood in 1976-91, prescribed only a rate of 1% as interest and hence on this issue, the petitioner's argument is accepted.

21. The impugned orders are set aside and the Writ Petitions stand disposed as above. No costs. Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Ska/sl



To

1. The Assistant Commissioner (CT),
East Tract Assessment Circle II,
P.A.P.J.M. Buildings, 4th Floor, Chennai-600006.

2. The Secretary to Government
The State of Tamil Nadu
Department of Commercial Taxes
and Religious Endowments
Fort St. George, Chennai-600009 .

+1 cc to M/s.N.Inbarajan,Advocate Sr.No.30357

W.P. No.22746 & 22747 of 2005
WMP.No.24794 and 24795 of 2005
& 3366 and 3362 of 2021

CA (CO)
PM(27/08/2021)