IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.08.2021

CORAM:

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.766 to 770 of 2012
MP Nos.1 to 1 of 2012

Rajan Spinning Mills Private Ltd.,
35, AKE Street No.3,
Gandhi Nagar, Tiruchengode,
Namakkal District,
Rep. By its Managing Director,
A.Selvarajan. .. Petitioner in all WPs.

Vs

1. The Joint Commissioner (CT),
   O/o. Joint Commissioner (CT),
   Salem Division,
   Salem.

2. The Commercial Tax Officer,
   Commercial Tax Office,
   Thiruchengode Town,
   Thiruchengode - 637 211. .. Respondents in all WPs.

Common Prayer: These Writ Petitions are filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the proceedings of 1st respondent in si.pa.va.No.158/2009/A11 in W.P.Nos.766 to 769 of 2012 and Spl.Regr.S.No.150 of 2010 in W.P.No.770 of 2012 dt 16.11.2011 and the consequential proceedings of the 2nd respondent in Na.Ka.11/2002 A2 dt 25.11.2011 quash the same and consequently direct the respondent to issued Settlement Certificate for the Assessment Years 1992-93, 1993-94, 1994-95, 1995-96 and 1997-98

For Petitioner in all WPs. : Mr.M.Hariharan

For Respondents in all WPs. : Mr.V.Veluchamy Government Advocate.

COMMON ORDER

The grievance of the writ petitioner is that they have paid the entire tax arrears under the settlement scheme with reference to the provisions of the Tamil Nadu Sales Tax (Settlement of Arrears) Ordinance, 2008. The settlement made by the petitioner was accepted and the tax arrears paid was also duly credited. While so, the respondents are claiming interest which is in violation of the provisions of the Settlement Act and the Rules. Based on certain erroneous facts, interest is claimed by the department and the petitioner submitted their representation and without considering the issues raised, the impugned orders are passed.

2. This Court is of the considered opinion that the levy of interest is to be strictly in accordance with the provisions of the Act. In the present case, the benefit of the Settlement Act and Rules also has to be taken into consideration for the purpose of levy of interest, as far as the petitioner is concerned. The date on which the payment is made and the scheme of settlement as well as the rules framed under the Settlement Act, are all to be adjudicated, based on the facts as well as the documents available. Such an adjudication cannot be done by the High Court in a writ proceedings under Article 226 of the Constitution of India and the parties are bound to establish their case with reference to various dates which are all relevant for the purpose of levy of interest on an assessee.

3. In view of the fact that factual adjudications are vital for the purpose of levy of interest, this Court is of the opinion that the 1st respondent has to conduct an enquiry with reference to the disputed facts and also consider the Settlement Act and Rules, which all are relevant. Under these circumstances, the petitioner is permitted to submit a representation to the 1st respondent along with complete details, documents and evidences, within a period of four weeks from the date of receipt of a copy of this order and on receipt of any such representation/application, from the petitioner, the 1st respondent shall entertain the same without reference to the delay and adjudicate the same on merits and in accordance with law, by affording opportunity to all the parties concerned and dispose of the same, as expeditiously as possible.

4. Further, till the disposal of the application to be filed by the petitioner, no coercive action shall be taken against the petitioner based on the orders impugned in these writ petitions.

5. With these observations, the Writ Petitions stand disposed of. No Costs. Consequently, the connected Writ

Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy//

Sub Assistant Registrar

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To

1. The Joint Commissioner (CT),
   O/o. Joint Commissioner (CT),
   Salem Division,
   Salem.

2. The Commercial Tax Officer,
   Commercial Tax Office,
   Thiruchengode Town,
   Thiruchengode – 637 211.

+5ccs to Mr.S.Ravee Kumar, Advocate, S.R.No.39965

W.P.Nos.766 to 770 of 2012

JPL(CO)
SU(01/09/2021)