BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.10169 of 2016
and
W.M.P.(MD)No.7946 of 2016

Tvl. Vel Traders,
Rep. by its Proprietor,
Pa.Saravanabalan. ... Petitioner

Vs.

The Commercial Tax Officer,
Chitrakarastreet Circle,
Madurai-20. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for records on the file of the respondent in TNGST No:463244/1992-93 dated 29.04.2016 and quash the same as illegal, against the Principles of Natural Justice and without Jurisdiction.

For Petitioner : Mr.A.Chandrasekaran

For Respondent : Mr.S.Dayalan,
Government Advocate.

ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent.

2.The petitioner is a dealer registered with the respondent. The case on had pertains to the assessment year 1992-1993. It arises under the earlier enactment namely., Tamil Nadu General Sales Tax Act, 1959. The petitioner was dealing in items such as flour, maida and suji. The petitioner was engaged in inter-state sales. The petitioner had filed his returns by treating the said goods as declared goods. He was paying tax at the rate of 4%. However, following the decision of the Hon'ble Supreme Court reported in ***1994 AIR 64 (Rajasthan Roller Flour Mills Association***

Vs. State of Rajasthan), the said goods came to be categorized as non-declared goods. Therefore, the aforesaid transactions came to attract the provisions of additional sales tax Act and surcharge. The petitioner's assessment was reopened and an order dated 30.12.2003 was issued calling upon the petitioner to pay additional sales tax of Rs.67, 630/- and surcharge of Rs.26,637/-. The petitioner promptly paid the said amounts. Thereafter, action was initiated demanding interest from the petitioner. The stand of the department was that the petitioner ought to have paid additional sale tax and surcharge during 1992-1993 itself. Therefore, for the period commencing therefrom, till date of payment interest was sought to be calculated and levied on the petitioner. The petitioner filed W.P.No.8063 of 2004 before this Court and the demand was quashed and the matter remitted to the file of the respondent to pass orders afresh in accordance with law. Pursuant to the remand order made on 06.01.2016 in W.P.No.8063 of 2004, the petitioner was afforded an opportunity of personal hearing and the present order came to be passed. The petitioner was directed to pay interest under 24(3) of Tamil Nadu General Sales Tax Act. Challenging the same, this writ petition has been filed.

3.The respondent has filed a detailed counter affidavit and the learned Government Advocate took me through the averments set out therein. The core argument of the learned Government Advocate is that in view of the decision of the Hon'ble Supreme Court, the petitioner's liability to pay additional sales tax and surcharge can no longer be in doubt. Obviously, the said amount should have been paid during 1992-1993 itself. Since the said amount was paid much later, for the belated payment, the petitioner was obliged to pay interest. He therefore called upon this Court to sustain the impugned order demanding payment of interest and dismiss the writ petition.

4.Though in normal circumstances, I would have accepted the stand of the learned Government Advocate, in the case on hand, I am not able to do so. This is because the items in question were treated only as declared goods till the Hon'ble Supreme Court pronounced its decision on 01.09.1993. The transactions in question took place during 1992-1993. In other words, before the Hon'ble Supreme Court pronounced its decision, the transactions in question got concluded. In the State of Tamil Nadu, the items were all along only considered as declared goods. That is why, when the Tamil Nadu Roller Flour Mills Association made a request for waiver of arrears of surcharge, additional surcharge and turnover tax, the Government accepted the said request and issued G.O.Ms.No.216 (Commercial Taxes & Religious Endowments Department) dated 11.07.1995. A copy of the said Government Order has been enclosed in the typed set of papers. It appears that the petitioner was not a member of this said association and therefore, the petitioner could not get the benefit of waiver.

5.Be that as it may, when the demand for payment of additional sale tax and surcharge was made, the petitioner promptly complied with the same and there was no default on his part. The petitioner did not challenge the assessment made by the respondent. In these circumstances, as rightly contended by the learned counsel for the petitioner, this Court ought to adopt the reasons assigned vide order dated 30.10.2019 in W.P.Nos.3779 to 3781 of 2012 (Hydromet India Limited Vs. The Commercial Tax Officer, Kancheepuram (North) Assessment Circle, Kancheepuram). A learned Judge of this Court in the said order held as follows:-

> *"6.The provision of Sections 42(1) and 42(3) of the Act dealing with payment and recovery of tax, penalty, etc. are relevant for adjudication of this matter and are extracted below:*
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> > *'Section 42. Payment and recovery of tax, penalty, etc.-(1) Save as other wise provided for in section 21, the tax assessed or has become payable under this Act from a dealer or person and any other amount due from him under this Act shall be paid in such manner and in such instalments, if any, and within such time as may be specified in the notice of assessment, not being less than thirty days from the date of service of the notice. The tax under section 21 shall be paid without any notice of demand. In default of such payment, the whole of the amount outstanding on the date of the default shall become immediately due and shall be a charge on the properties of the person or persons liable to pay the tax or penalty or interest under this Act.*
> >
> > *Section 42(2) ....*
> >
> > *Section 42(3) On any amount remaining unpaid after the date specified for its payment as referred to in sub-section (1) or in the order permitting payment in instalments, the dealer or person shall pay, in addition to the amount due, interest at [two] per cent per month of such amount for the entire period of default: Provided that if the amount remaining unpaid is less than one hundred rupees and the period of default is not more than a month, no interest shall be paid:'*
>
> *7. The scheme of levy of interest under Section 42 is applicable to all assessments of tax barring a*

self assessment under Section 21. Thus where any amount is due as per the return filed by the petitioner, the same is immediately payable and no separate notice of demand need be issued in that regard as the return of income is itself an assessment of the petitioner. In all other cases, where pre-assessment notice was issued to the petitioner and a demand raised vide an order of assessment, such order of assessment shall be deemed to be a demand notice and the demand raised thereunder is to be paid within 30 days from date of service of the order of assessment. In such cases, interest under Section 42(3) is liable to be paid in addition to the tax demanded at the rate of 2% per month for such month for the entire period of assessment.

8. In the present case, the petitioner has admittedly remitted the demand for the years 2007-2008 and 2008-2009 on 31.01.2011 and 23.06.2011 even prior to the dates of assessment i.e. 23.12.2011. Thus and since the demands have been paid within the timelines stipulated in terms of Section 42(1), no interest can be levied in terms of Section 42(3). As far as the period 2009-2010 is concerned, the order of assessment is dated 09.09.2011 and the demand raised has been remitted on 07.10.2011 within 30 days from date of order itself. Thus even in this case, the provisions of Sections 42(1) and 42(3) of the Act are

9. The arguments of the revenue to the effect that the ITC claimed in the return was incorrect, thus warranting the levy of interest, does not impress. The question of whether a claim of ITC is correct or otherwise is a matter of assessment and would not come within the ambit of self-assessment or computation of advance tax under Section 21. This argument is rejected.

10.These writ petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

6.The learned counsel for the petitioner would point out that the statutory provisions interpreted by the learned Judge are *in pari materia* with the relevant provisions obtaining on hand. Section 24-(1) and Section 24-(3) of Tamil Nadu General Sales Tax Act, read as under:-

*"**Section 24. Payment and recovery of tax: (1)** Save as otherwise provided for in sub-section(2) of section 13, the tax assessed or has become payable under this Act from a dealer or person and any other amount due from him under this Act shall be paid in such manner and in such installments, if any and within such time as may be specified in the notice of assessment, not being less than twenty-one days from the date of service of the notice. The tax under sub-section (2) of section 13 shall be paid without any notice of demand. In default of such payments the whole of the amount outstanding on the date of default shall become immediately due and shall be a charge on the properties of the person or persons liable to pay the tax or interest under this Act.*

Section 24-(2) ....

***Section 24-(3)** On any amount remaining unpaid after the date specified for its payment as referred to in sub-section (1) or in the order permitting payment in instalments, the dealer or person shall pay, in addition to the amount due, *[interest at one and half per cent per month of such amount for the first three months of default and two per cent per month of such amount for the subsequent period of default]: Provided that if the amount remaining unpaid is less than one hundred rupees and the period of default is not more than a month, no interest shall be paid: Provided further that where a dealer or person has preferred an appeal or revision against 1 [any order of assessment or revision of assessment under this Act], the interest payable under this sub-section, in respect of the amount in dispute in the appeal or revision, shall be postponed till the disposal of the appeal or revision, as the case may be, and shall be calculated on the amount that becomes due in accordance with the final order passed on the appeal or revision 2 [as if such amount had been specified in the order of assessment or revision of assessment, as the case maybe]."*

7.It is not as if the petitioner tried to evade payment of tax. He paid tax in terms of the self assessment made by him. When it was reopened and demand was made for payment of additional sales tax and surcharge, the petitioner complied with the said demand. Only if the petitioner had not complied with the demand set out in the assessment order passed by the respondent, the question of levy of interest will arise. In view of the prompt compliance by the petitioner, there is no justification in making demand for payment of interest.

8.More than anything else, identically placed persons were given the benefit of waiver. On a person, who has paid the statutory levies, fastening liability to pay interest in my view appears to be highly inequitable. Following the aforesaid decision in Hydromet India Limited Case, I hold that the demand for payment of interest is not sustainable. The impugned demand order is quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-I)

// True Copy //

/ /2021
Sub Assistant Registrar(CS)

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Note : 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:

The Commercial Tax Officer,
Chitrakarastreet Circle,
Madurai-20.

+1 CC to SPL GP (SR-6683[F] dated 23/02/2021)

+1 CC to Mr.A.CHANDRASEKARAN, Advocate (SR-6733[F] dated 23/02/2021)

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