



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.08.2021

CORAM

THE HONOURABLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY

W.P(MD)No.15229 of 2017

M/s.Wahab & Co represented
by its Managing Partner,
J.Shajathi Begum

... Petitioner

Vs.

1.The District Collector,
Thanjavur.

2.The District Supply Officer,
Thanjavur District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, by quashing the order passed in Na.Ka.No.KA1/16741/2009, dated 10.04.2017 by the first respondent by calling for the records from the first respondent with regard to levy of interest.

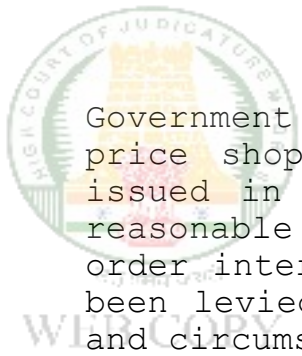
For Petitioner : Mr.V.Chandrasekar
For R-1 : Mr.R.Baskaran
Counsel for State.
For R-2 : Mr.G.Muthukannan

ORDER

The petitioner challenges an order dated 10.04.2017 of the first respondent whereby the petitioner was called upon to pay a sum of Rs.3,63,682/- (Rupees Three Lakhs Sixty Three Thousand Six Hundred and Eighty Two only) towards the cost of 18,150 litres of kerosene which was seized from Hajee Agencies and handed over to the petitioner for supply to fair price shops.

2. The petitioner is an authorized dealer in kerosene and related products. As stated above, 18,150 litres of kerosene was seized in early 2009 from Hajee Agencies and handed over to the petitioner. According to the petitioner, such allotment was in turn, sold by the petitioner to fair price shops, but the petitioner was unable to make the remittance to the Government in view of the failure of the Government to specify the head of account to which such remittance should be made.

3. After the lapse of about eight years, the petitioner states that it received a communication from the Government with regard to the supply of 18,150 litres of kerosene. Immediately upon receipt of the said communication, the petitioner informed the



Government that the said 18,150 litres had been supplied to fair price shops. The petitioner states that the impugned order was issued in these facts and circumstances without even providing a reasonable opportunity to the petitioner. It is stated that by such order interest at the rate of 12% per annum and penal interest have been levied. The present Writ Petition is filed in the said facts and circumstances.

4. Learned counsel for the petitioner reiterated the facts set out above and assailed the impugned order on three grounds. His first contention is that the petitioner cannot be faulted for non remittance of the price of 18,150 litres of kerosene because the Government did not indicate the head of account. The second contention is that this was not a regular procurement by the petitioner from the Government and, therefore, the Government was under an obligation to call upon the petitioner to remit the payment. The third contention is that the impugned order was issued without notice to the petitioner and that the imposition of a high rate of interest coupled with penal interest is arbitrary.

5. On the contrary, Mr.R.Baskaran, learned counsel for the State, submits that the petitioner is a regular dealer and, therefore, cannot absolve herself of responsibility and liability by stating that she does not know the appropriate head of account to which remittance should be made. He also points out that the petitioner is engaged in commercial transactions and, therefore, has deployed the money unlawfully retained by her in her business activity. Consequently, it is stated that the imposition of interest at the rate of 12% per annum as also penal interest is reasonable and should not be interfered with.

6. Upon considering the rival contentions and the relevant documents, it is evident that the petitioner retained the price realized from the sale of 18,150 litres of kerosene from the year 2009 up to the year 2017. Given the fact that the petitioner is a registered dealer in kerosene products and has been engaged in business with the Government for a considerable period of time, the non remittance of the amount by citing lack of knowledge of the relevant head of account is untenable. At the same time, the Government cannot be absolved of all responsibility for not calling upon the petitioner to remit this amount earlier. Therefore, while the petitioner is largely to blame, the Government is partly to blame for the non remittance of this amount for such a long period. Consequently, the equities should be balanced.

7. Keeping in mind the rate of interest prevailing between 2009 and 2017, the rate of 12% per annum as simple interest is reasonable especially because the petitioner deployed the money in commercial activities. However, the levy of penal interest is not reasonable in the facts and circumstances. Therefore, the



petitioner by computing interest on the principal amount of Rs.1,45,200/- (Rupees One Lakh Forty Five Thousand and Two Hundred only) at the rate of 12% per annum simple interest. Upon such computation, credit should be given to the sum of Rs.2,00,000/- (Rupees Two Lakhs only) remitted by the petitioner at the time of grant of an interim order in these proceedings. The amount due and payable after giving credit to the sum of Rs.2,00,000/- (Rupees Two Lakhs only) shall be paid by the petitioner within a period of two (2) weeks from the date of receipt of a communication from the respondents indicating the balance due and payable after recomputation in the manner aforesaid. The impugned order dated 10.04.2017 shall stand modified to the extent indicated above.

8. W.P.(MD).No.15229 of 2021 is disposed of on these terms without any order as to costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

tsg

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

1.The District Collector,
Thanjavur.

2.The District Supply Officer,
Thanjavur District.

+1 CC to M/s.GP (SR-26070[F] dated 12/08/2021)

W.P (MD) No.15229 of 2017
11.08.2021

RD(24.09.2021) 3P 4C