

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.11.2021

PRONOUNCED ON : 04.03.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NOS.1442 & 1446 OF 2021

AND

W.M.P.NOS.1615 & 1619 OF 2021

(Through Video Conferencing)

M/s.Kalyan Jewellers India Pvt. Ltd.,
Rep.by its Chief Manager,
No.283, 5th Cross Street,
100 Feet Road,
Gandhipuram,
Coimbatore - 12.

... Petitioner in
Both W.P's

.Vs.

The Assistant Commissioner (ST),
Gandhipuram Circle,
Coimbatore.

... Respondent in
Both W.P's

PRAYER:-

Petition filed under Article 226 of the Constitution of India to issue Writs of Certiorari to call for the records of the impugned revised notice in TIN No.33532183658/2008-09 dated 21.12.2020 and TIN No.33532183658/2010-11 dated 21.12.2020 respectively from the files of the respondent and quash the same.

For Petitioner : Mrs.Aparna Nandakumar
(In both W.P's)

For Respondent : M/s.Amirta Dinakaran
Government Advocate
(In both W.P's)

C O M M O N O R D E R

Short points that arises for consideration in the present writ petition, is whether the petitioner can be fastened with interest liability under Section 42(3) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as TNVAT Act, 2006) as detailed under:

S. No	Month	Purchase tax u/s 12 as per the monthly returns	Due date	Paid date	No. of days delayed			Interest due @ 125% upto 28.05.2013 @ 2% from 29.05.2013
1.	Dec 2010	Rs.5,00,000/-	20.01.2010	28.2.2017	3	4	8	Rs.2,55,163/-
					3	9	-	Rs.4,56,251/-
				Total	7	1	8	Rs.7,11,414/-
2.	Jan 2011	Rs.12,00,000/-	20.02.2010	28.2.2017	3	3	8	Rs.5,97,181/-
					3	9	-	Rs.10,95,000/-
				Total	7	0	8	Rs.16,92,181/-
3.	Feb 2011	Rs.9,00,000/-	20.03.2010	28.02.2017	3	2	8	Rs.4,36,480/-
					3	9	-	Rs.8,21,250/-
				Total	6	11	8	Rs.12,57,730/-
4.	March 2011	Rs.8,00,000/-	20.04.2010	28.02.2017	3	1	8	Rs.3,77,844/-
					3	9	-	Rs.7,30,001/-
				Total	6	10	8	Rs.11,07,845/-

Grand Total : Rs.47,69,170/-

2. The brief facts of the case is that the petitioner filed returns for the Assessment Years 2008-2009 and 2010-2011. The earlier assessment order was passed for the Assessment Year 2008-2009 on 15.06.2012. Thereafter, two assessment orders dated 25.02.2014 came to be passed for the respective Assessment Years after the amendment to Section 22(2) of the TNVAT Act, 2006. Prior to amendment, the returns filed by the dealer were to be

assessed in terms of amendment under Section 22 of the TNVAT Act, 2006.

3. The two assessment orders which came to be passed on 25.02.2014 were challenged by the petitioner in WP.Nos.8788 to 8792 of 2014. The petitioner had also challenged the assessment orders for the Assessment Years 2011-2012, 2013-2014 order dated 25.02.2014. By an order dated 29.10.2014, this writ petition was allowed by giving an opportunity to the petitioner to file their objections along with documents.

4. The petitioner had also filed W.P.Nos.2653 & 2654 of 2016 for the Assessment Years 2010-2011 and 2011-2012, seeking to issue a writ of mandamus to direct the respondent herein to consider the Rectification Petition dated 22.12.2015 filed by the petitioner under Section 84 of the TNVAT Act, 2006 to revise the order dated 30.11.2015 bearing TIN No.33532183658 for the years 2010-2011 and 2011-2012 and to pass orders on merits after affording an opportunity of hearing to the petitioner within a time frame as stipulated by this Court. The said writ petition was disposed by an order dated 01.02.2016 with the following observation:

"5. Having regard to the submissions made by the learned counsel on either side, I direct the respondent to consider the petitions dated 22.12.2015 filed by the petitioner and pass orders on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order. It is needless to say that the respondent shall not proceed further in the matter till orders are passed in the Section 84 petitions.

6. With this observation, the writ petitions are disposed. No costs. Consequently, the connected Miscellaneous petitions are closed."

5. In the above background, fresh assessment orders came to be passed for the Assessment Years 2008-2009 and 2010-2011 on 29.12.2016. Though the original proceedings was relating to mismatch between the input received and input claimed, in these orders dated 29.12.2016, the additional demand on purchase tax on account of purchase made from unregistered dealer also came to be adjudicated and tax was demanded. Accordingly, for the respective Assessment Years, the petitioner was called upon to pay a sum of Rs.31,96,815/- and Rs.1,82,89,804/- towards the purchase tax and after adjusting the purchase tax already paid the differential amount of Rs.26,66,277/- and Rs.33,99,999/- was demanded from the petitioner. Apart from the above, the petitioner was also levied with the penalty Rs.6,28,062/- and

Rs.2,87,13,538/- under Section 27(4) of TNVAT, 2006, for the respective Assessment Years. These assessment orders were also subjected to challenge in W.P.Nos.2732 to 2737 of 2017. In these above writ petitions, the prayer of the petitioner was for a writ of Certiorari to call for the records of the respondent dated 29.12.2016 received on 04.01.2017 in TIN:33532183658/2008-09 to 2013-14 and to quash the same.

6. After considering the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent, the learned Single Judge of this Court, by an order dated 07.11.2019 in W.P.Nos.2732 to 2737 of 2017 accepted the contention of the petitioner as far as the imposition of penalty under Section 27(4) of the TNVAT, 2006 with the following observation:

"12. The quantification of such penalty hinges upon the tax determined to be due by the assessee. A demand of tax due to the revenue by an assessee is thus a sine qua non for the levy of penalty under Section 27(4), the provisions of sub-section 4 making it amply clear that the levy of penalty shall be 300% of the tax due and as quantified under Section 27(2).

7. In the above back ground, the impugned notices were issued to the petitioner seeking to recover interest for the belated payment of purchase tax from the petitioner has been made. Subsequently, for the Assessment Year 2008-2009, a sum of Rs.42,31,538/- has been demanded as interest payable by the petitioner and for the Assessment Year 2010-2011 a sum of Rs.47,69,170/- has been demanded from the petitioner under Section 42(3) of the TNVAT Act, 2006.

8. The learned counsel for the petitioner further submits that the impugned demand notices are time-barred and therefore there is no question of demanding interest in terms of revised notices in the impugned herein dated 21.12.2020 for the respective Assessment Years. The learned counsel for the petitioner has placed reliance on the clarification of the Principal Secretary/Commissioner of Commercial Taxes, Chepauk, Chennai - 600 005 Vide letter No.R5/4593/2017 dated 08.01.2021.

9. The learned counsel for the petitioner has also placed reliance on the decision of the Hon'ble Supreme Court in Commissioner of Trade Tax, Lucknow Vs. Kanhai Ram Thekedar, 2005 (185)ELT3(SC), (2005) 4 SCC 472 and (2005) 141 STC 1(SC). A reference was made to para-17 from the above judgment of the Hon'ble Supreme Court wherein, the Hon'ble Supreme Court accepted the contention of the respondent therein by holding

that the proceedings were time-barred. The learned counsel further submits that in case, the assessment order was on 06.06.1986 and another order was passed on 30.07.1990 holding that on admitted amount of tax, the assessee was liable to pay interest at 24% p.a from 1.5.1978 and therefore, on the question of delay in demanding interest, the demand has to be set aside. It is further submitted that the Hon'ble Supreme Court accepted the contention of the assessee that there was no demand of interest in the assessment order and since the assessment order did not include a claim for interest, the demand for interest had to be made within a reasonable period thereafter.

"7. Thus, we are of the opinion that the High Court was not justified for deleting the interest levied by the authorities on the ground that no notice was served. In this view, the impugned judgment would normally be unsustainable. However, as already noticed, the respondent-assessee has specifically urged that the subsequent proceedings to the assessment is barred by limitation and that even though the order was passed on 6.6.1986 imposing tax liability etc., the assessing authority had passed another order only on 30.07.1990 holding that on admitted amount of tax, the assessee was liable to pay interest at 24% p.a from 1.5.1978 and, therefore, on the question of delay in demanding interest, the demand has to be set aside. This argument of the learned counsel appearing for the respondent merits acceptance. In this case, the assessment relates to the assessment years 1977-78. The respondent furnished his return to the assessing authority and the assessing authority passed an assessment order against the respondent and in accordance with the assessment order, the assessee has deposited the entire amount of tax amounting to Rs.15,236.98 paise on 3.8.1986 and Rs.2,817/- on 26.6.1982. However, on 30.7.1990, the assessing authority passed an order imposing interest against the respondent. Thus the demand was after nearly four years. There was no demand of interest in the assessment order which, in our opinion, form 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 assessment is not liable

to pay the interest as demanded. The Department is not entitled to recover the interest from the assessee-respondent but is at liberty to recover the amount of interest demanded from the Assessing Officer concerned who have not taken steps for four years."

10. The learned counsel for the petitioner has also placed reliance on the decision of the Hon'ble High Court of Delhi in Kwalitiy ICE Cream Company and Others Vs. Union of India and others, 2012(281)ELT507(Del.), 2121[27]S.T.R.8(Del.) A reference was made to paragraph nos.4 and 5 from the aforesaid decision which reads as under:

"4. The learned counsel for the petitioner drew our attention to a decision of the Tribunal reported in 1996(86) DLT 144 entitled Collector of Customs, Madras Vs.TVS Whirlpool Limited, in which it was held that the lower authority was right in holding that the demand beyond the period of six months from the clearance of goods, was barred by limitation. This conclusion was arrived at based on the logic that the period of limitation for demanding interest ought to be the same as the period of limitation for demand of duty. This matter was carried in appeal to the Supreme Court. The matter was numbered as Civil Appeal No.7299-7309/1997. The Supreme Court by an order dated 07.10.1999 held as under:-

It is only reasonable that the period of limitation that applies to a claim for the principal amount should also apply to the claim for interest thereon. We find no merit in the appeals and they are dismissed with costs.

5. It is therefore, clear that the principle adopted by the Supreme Court was that the period of limitation, unless otherwise stipulated by the statute, which applies to a claim for the principal amount should also apply to the claim for interest thereon. If that be the position, the period of limitation prescribed for demand of duty under Section 11A is normally one year and, in exceptional circumstance of a case falling under the proviso to Section 11A(1), the period of limitation is five years. But that would be applicable only in case of misstatement, fraud, concealment etc., which is not the case here. As such, in the present case, the period of limitation for the demand for duty would be one year. By the same logic, the period of

limitation for demand of interest thereon would be one year. Inasmuch as the demand for interest has been mad beyond a period of one year, the demand would be clearly hit by the principle of limitation as laid down by the Supreme Court. Even if, we take the letter dated 25.10.2004 as the first demand of interest, although that letter was in respect of a demand for differential duty, the demand would still be beyond a period of three years."

11. The learned counsel for the petitioner has also placed reliance on the decision of the Bombay High Court in Commissioner Vs.Emco Ltd - 2015 (325) E.L.T. A104, wherein the decision of the Tribunal was questioned. The Bombay High Court dismissed the appeal by following the decision of the Hon'ble Supreme Court in Commissioner of Central Excise Vs. TVS Whirlpool Limited, 2000 (119) E.L.T. A177(SC), a specific reference was made to following passage is reads as under:

"It is only reasonable that the period of limitation that applies to a claim for the principal amount should also apply to the claim for interest thereon".

12. The learned counsel for the petitioner further submits that the writ petition filed deserves to be allowed as the demand for interest under Section 43(2) was time barred.

13. The learned counsel for the petitioner has relied on the recent circular/clarification of the Principal Secretary/Commissioner of Commercial Taxes, Chepauk vide Letter No.R5/4593/2017 dated 08.01.2021 wherein it was clarified as under:-

13. In view of the above positions, following clarificatory instructions is issued:-

13.1. In respect of Assessment years 2007-08 to 2013-14,

A) Wherever, for any reason, pre-assessment notice or Best Judgment notices were not issued to the selected tax payers prior to 31st day of October of the succeeding years viz., 2008-09 to 2014-15, no summons or notice need to be issued to the tax payers requiring them to produce books of accounts for detailed check under Section 22(3) as long as issued involved therein are not covered within Section 27(6), 27(7) and 27(8) of TNVAT Act, 2006.

B) Where pre-assessment notice or Best Judgment notices already initiated consequent to filed audit or surprise inspection proposals received from Enforcement Wing, to the selected tax payers, no summons or notice need to be issued to the tax payers requiring them to produce books of accounts for detailed check under Section 22(3), if the related assessment years are already covered as it is presumed that detailed verification already been carried out during such inspection or audit of the premises of the tax payers.

C) Where, pre-assessment notice or Best Judgment Notices not already initiated consequent to scrutiny of returns, internal audit defects, AG audit defects, etc., to the selected tax payers prior to 31st day of October of the succeeding years viz., 2008-09 to 2014-15, no summons or notice need to be issued to the tax payers requiring them to produce books of accounts for detailed check under Section 22(3) of TNVAT Act, 2006.

D) Where, pre-assessment notice or Best Judgment Notices not already initiated consequent to verification of third party data or MIS, etc., to the selected tax payers prior to 31st day of October of the succeeding years viz., 2008-09 to 2014-15, no summons or notice need to be issued to the tax payers requiring to produce books of accounts for detailed check under Section 22(3) of TNVAT Act, 2006.

E) Where, no action in the form of issue of Pre-assessment notice, Pre-revision notice or Best Judgment Notices has been initiated in any form for any reason other than the listed above, against the selected tax payers prior to 31st day of October of the succeeding years viz., 2008-09 to 2014-15, no summons or notice need to be issued to the tax payers requiring them to produce books of accounts for detailed check under Section 22(3) of TNVAT Act, 2006.

F) Where, the assessment has been initiated on the selected list of tax payers for any reasons thereof and no subsequent action in the form of issue of Pre-assessment notices, Pre-revision Notices or Best Judgment Notices has been taken within a period of 6 years from the said date of assessment, then no summons or notice need to be

issue to the said tax payers requiring them to produce books and accounts for detailed check under Section 22(3) of TNVAT Act, 2006.

14. Defending the stand of the respondent, the respondent submits that the petitioner has only challenged the notices issued under Section 42(3) of the TNVAT Act, 2006, and therefore the petitioner can be asked to file a reply and participate in the adjudication mechanism prescribed under the TNVAT Act, 2006. A specific reference was made to averments under Section 8 by the contention of the respondent. It is submitted that as per the Section 22(2) of TNVAT, 2006, assessment order was passed for the Assessment Years 2008-2009 on 15.06.2012 by accepting the monthly returns filed by the petitioner. Subsequently, the assessment was revised on 29.10.2016, which relates to purchase tax under Section 12 of TNVAT Act, 2006 which came to the light later. There was no deemed assessment in terms of amended under Section 12 of TNVAT Act, 2006 for these period. It is further submitted that the averments and submission of the counsel for the petitioner that there was deemed assessment is not correct as per the Assessment Year 2008-2009 is concerned, has already assessment order was passed on 15.06.2012.

15. The learned counsel for the respondent further submits that the petitioner having accepted the tax liability for the respective Assessment Years cannot refuse to pay interest under Section 42(3) of TNVAT, 2006. The specific reference was made to the decision of the Hon'ble Supreme Court in Apollo Tubes Limited Vs. Additional Deputy Commercial Tax Officer, Ranipet and another[1994] 93 STC 339 (Mad).

8. We have already extracted the relevant rules. We are of the view that sub-rule (4) will come into play only if the return is not filed within the date specified or if the return is incorrect or incomplete. Sub-rule (4) will not cover a case where complete return is filed and the only default on the part of the dealer is non-payment of tax or failure to attach proof of payment of tax. In such cases, sub-rule (3) will itself govern. Sub-rule (3) is very clear, inasmuch as it says that in all such cases, tax shall be recovered in accordance with the provisions of the Act without any notice or demand to the dealer. Hence, in the absence of proof of payment of tax, it is open to the department to recover the tax due as per the provisions of the Act. Automatically, the provisions for payment of interest will also come into play, and the department is entitled to recover interest as provided under section 24(3).

16. Finally, the learned counsel for the respondent also submitted that the interest payable on account of delayed payment of tax was compensatory in nature and not penal in nature and therefore there is no scope for any concession under the schemes of enhancement. It is submitted that there is no limitation for recovery of interest on delayed payment of tax. The learned counsel for the respondent has relied on the decision of the Supreme Court in Sakthi Sugars Ltd Vs. Assistant Commissioner of Commercial Taxes, reported in (1985) 59 STC 52.

17. The learned counsel for the respondent also submitted that the requirements of maintaining proper records in terms of Rule 12 of TNVAT, Act 2006 was not followed by the petitioner and therefore there was no excuse for not paying interest.

18. Heard the learned counsel for the petitioner and the learned counsel for the respondent. Perused the impugned notice and the assessment order and re-assessment order have been passed in this case and also perused the order passed by this Court and also the decisions of the Hon'ble Supreme Court referred by the learned counsel for the petitioner and the learned counsel for the respondent.

19. As per the decisions of the Hon'ble Supreme Court in Commissioner of Central Vs. M/s.Ratan Melting and Wire, Calcutta, (2005 3 SCC 57), Circulars of the Board are not binding on the Court. Therefore, the views expressed by the Principal Secretary/Commissioner of Commercial Taxes, Chepauk vide Letter No.R5/4593/2017 dated 08.01.2021 will not come to the rescue of the petitioner.

20. The assessment under the Tamil Nadu Value Added Tax Act, 2006 is based on the self assessment by an assessee by filing proper returns declaring the income. Assessment is thus driven by the returns filed by an assessee or a dealer. The assessment will be completed based on the information furnished by an assessee/dealer in the returns and the books of accounts that are produced during assessment. If an assessee fails to file correct returns and furnish required documents, the interest of the revenue cannot be compromised. An assessee/dealer cannot take advantage of the lapses committed at a later point of time if subsequently it is found that the turn-over had escaped resulting in evasion of tax by such an assessee/dealer. Ideally, an assessee under the Act is required to make correct declaration under Section 21 of the Tamil Nadu Value Added Tax Act, 2006 read with Rule 7 of the Tamil Nadu Value Added Tax Rules, 2007. Therefore, an assessee/dealer cannot take advantage of a failure to make a proper declaration in time. If there is a failure resulting in tax demand such an assessee or a dealer is bound to pay the interest. Interest is consequential.

21. Under Section 42(1) of the Tamil Nadu Value Added Tax Act, 2006, the tax assessed which 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.

22. 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.

23. A reading of Sub Clause 3 to Section 42 of the Act also makes it clear that on any amount remaining unpaid after the date specified for its payment as referred to in subsection (1) or in the order permitting payment in instalments, the dealer or person shall pay, in addition to the amount due, interest at 2% per month of such amount for the entire period of default. The specified date for making payment of tax is in terms of Rule 7 of the Rules.

24. Thus, the challenge by the impugned Notices are without any merits. If there is a failure to tax in time, the dealers are required to pay interest as payment of Interest is consequential. Incidentally, same issue came up for consideration in the case of Sri Sakthi Murugan Tex Vs. The Assistant Commissioner (CT), Perundurai, Erode District in W.P.No.21878 of 2021 dated 16.02.2022, in the above case observed and held as follows:

"10. The question for determination is whether the petitioner can be absolved from payment of interest on the delayed payment of differential tax paid for the period from the date on which the tax was originally to be paid and the actual date of payment of the differential tax on 24.03.2016.

11. In this case, there was a deemed assessment in terms of proviso to Section 22(2) of the TNVAT Act, 2006. Therefore, the notice was issued to revise the self assessment made by the petitioner under Section 21 of the TNVAT Act, 2006.

12. As per Section 42(1) of the TNVAT Act, 2006, tax under Section 21 of the TNVAT Act shall be paid without any notice. Tax which is assessed or has become payable from a dealer or a person has to

be paid in such manner and in such instalments, if any, and within such time as may be specified in the notice of assessment.

13. As per Section 42(3) of the TNVAT Act, 2006, 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 the rate of 2% per month of such amount for the entire period of default.

14. The language in Section 42(3) of the TNVAT Act, 2006 makes it very clear that the interest is payable for the entire period of default. The default period of the petitioner started from the date on which the petitioner was originally required to pay tax on his turnover in the monthly returns under Section 21 of the TNVAT Act, 2006.

15. This is a case where there was a suppression of taxable turnover by the petitioner in the returns filed under Section 21 of the TNVAT Act, 2006 read with Rule 7 of the TNVAT Rules, 2007. Since the petitioner failed to correctly declare the taxable turnover and paid the differential tax only after the proceeding was initiated vide notice dated 18.01.2016 against the petitioner under Section 27 (1)(a) read with Section 22(3) of the TNVAT Act, 2006. There can be no premium for such lapse. There can be no waiver of interest for default period as such tax ought to have paid at the time of filing of return. By paying tax pursuant to revision of assessment, the petitioner is not doing a favour to the revenue. The petitioner is merely paying the tax which ought to have been earlier. Thus, there is no merit.

16. Therefore, there are no merits in the present Writ Petition. The present Writ Petition is liable to be dismissed and is accordingly dismissed. No cost. Consequently, connected Miscellaneous Petition is closed."

25. In the light of the above, I do not find any merits in the present Writ Petitions. It is open for the petitioner to reply to the Impugned Notice on the calculations within a period of 30 days of receipt of this notice, failing which the respondent shall proceed to pass final order preferably within a

period of 30 days thereafter after calling the petitioner for a personal hearing.

26. Therefore, these Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kkd

To

The Assistant Commissioner (ST),
Gandhipuram Circle,
Coimbatore.

+lcc to Mrs.Aparna Nandakumar, Advocate, S.R.No.14561
+lcc to the Special Government Pleader (Taxes), S.R.No.14798

W.P.NOS.1442 & 1446 OF 2021

GPL(CO)
PBS/28/03/2022