IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 18-02-2022

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.Nos.3485, 3489, 3493, 3497 of 2022
and
W.M.P.Nos.3610, 3612, 3616, 3617, 3624, 3625,
3632, 3633, 3614, 3622, 3626 and 3635 of 2022

Hermes I Tickets Private Limited
Rep. by its Mr.Vignesh Ravindran,
Managing Director,
No.30A, South Phase, 1st Floor, Sai Krupa,
Thiruvika Industrial Estate,
Guindy, Chennai,
Tamil Nadu - 600 032.

...Petitioner in all the writ petitions

-vs-

1. The Commissioner of State Tax
   Ezhilagam Building,
   Kamarajar Road, Chepauk,
   Chennai - 600 005.

2. The Assistant Commissioner (ST)
   Guindy Assessment Circle,
   No.253, 2nd Floor,
   Commercial Taxes and Registration Department Building,
   Nandhanam, Chennai - 600 035.

3. The Branch Manager, ICICI Bank Ltd.,
   Cheteau D Ampa, No.110,
   Nelson Manickam Road,
   Chennai, Tamil Nadu - 600 029.

4. The Branch Manager, ICICI Bank Ltd.,
   110, Prakash Presidum,
   Utthamar Gandhi Salai,
   Nungambakkam High Road,
   Chennai, Tamil Nadu - 600 034.

...Respondents in all the
writ petitions

Common Prayer: Writ petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in the Impugned

Notice for Belated Payment of Tax (demand interest) issued vide No.33AABCH7295J1ZB/2020-21, No.33AABCH7295J1ZB/2019-20, No.33AABCH7295J1ZB/2018-19, No.33AABCH7295J1ZB/2017-18 respectively, dated 05.01.2022 by the second respondent and quash the same and direct the respondents to compute and accept the interest liability based on the amount available / credited in the Electronic Cash Ledger (in excess of the previous month liabilities) as date of payment of tax instead of date of filing of the GSTR-3B returns.

For Petitioner : Ms.S.Akila
in all the writ petitions

For Respondents : Mr.V.Prasanth Kiran,
Government Advocate
in all the writ petitions

COMMON ORDER

The prayer sought for in all these writ petitions is for a writ of Certiorarified Mandamus, to call for the records in the Impugned Notice for Belated Payment of Tax (demand interest) issued vide No.33AABCH7295J1ZB/2020-21, No.33AABCH7295J1ZB/2019-20, No.33AABCH7295J1ZB/2018-19, No.33AABCH7295J1ZB/2017-18 respectively, dated 05.01.2022 by the second respondent and quash the same and direct the respondents to compute and accept the interest liability based on the amount available / credited in the Electronic Cash Ledger (in excess of the previous month liabilities) as date of payment of tax instead of date of filing of the GSTR-3B returns.

2. The petitioner is engaged in the business of Retail assisted e-commerce and through its agent network and partner tie ups, facilitates transactions in the Travel, Remittances and the payment domain.

3. Originally the petitioner company was registered under the erstwhile Service Tax Department and after the implementation of the GST Act, the company got migrated to the GST with GSTIN 33AABCH7295J1ZB and it was assigned to the Tamil Nadu State Government for administrative control.

4. In respect of the Assessment Year 2017-18, to 2020-21, it is the case of the Revenue that, the monthly tax due payable by the petitioner in most of the months paid belatedly as otherwise, the tax due of every month should have been paid on or before 20th of succeeding month.

5. Since for several months, such a belated payment has been made, the Revenue decided to impose and collect interest on such belated payment under Section 50 of the TNGST Act, 2017. Accordingly, after having calculated the period of delay, wherein the tax due has become due and remain unpaid, the interest having been calculated, an order by way of demand has been made by the Revenue on 05.01.2022 directing the petitioner to pay the amount immediately. Aggrieved over the said demands, the present writ petitions have been filed.

6. Heard the learned counsel appearing for the petitioner who would submit that, under Section 49 of the Act, where under explanation ''a", the date of credit to the account of the Government in the authorised Bank shall be deemed to be the date of deposit in the electronic cash ledger. If that being so, whenever the petitioner paid the tax by way of credit in the account of the Government, that date shall be taken into account as the date of payment of tax in the electronic cash ledger. However, according to the learned counsel for the petitioner, in all these cases, the respondent Revenue has not taken the exact date, wherein through Bank the petitioner paid the tax by crediting in the account of the Government and therefore, if that dates are taken into account, there may not be any delay, atleast there may not be much delay as claimed by the Revenue through the impugned demand orders / notices, therefore the impugned demand notices / decisions / orders are vitiated.

7. The learned counsel appearing for the petitioner would further submit that, pursuant to the impugned demand, the Bank accounts of the petitioner has been freezed, therefore the petitioner's business has been crippled, hence, the petitioner's counsel seeks indulgence of this Court against the impugned demand and also the consequential order of freezing of the account of the petitioner.

8. On the other hand, Mr.V.Prasanth Kiran, learned Government Advocate appearing for the respondents / Revenue would contend that, it is an admitted case on the part of the petitioner that, the tax demand shall be paid before 20th of every succeeding month and in respect of which, for each year, monthly wise due date for payment of tax and the actual payment made by the petitioner by way of e-payment has been given in the impugned demand order itself, where it clearly discloses, except few months, in all other months, there has been a delayed payment.

9. In respect of the months where the tax due was paid promptly on or before 20th of the next month, the impugned order itself shows that, there has been no demand of any interest and it has been shown as zero and for the remaining months, where there was a delayed payment, the period which was remained as unpaid of the tax was taken in to account and accordingly, the interest calculated and that was demanded.

10. Therefore the petitioner cannot have any grievance against the impugned demand which is a statutory due by way of interest can be recovered from the petitioner, for the said purpose alone, the impugned demand has been made.

11. The learned Government Advocate would further submit that, as against these orders, the petitioner can prefer appeal under Section 107 of the Act, without which or without exhausting the same, since these are all the factual matrix as to whether the petitioner has paid the tax every month within the time or not can only be gone into by the Appellate Authority, the petitioner cannot approach this Court by filing these writ petitions and therefore, on the maintainability of the writ petition itself, the learned Government Advocate raises the point that, it is not maintainable.

12. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

13. In the impugned demand itself what is the due date payable for the tax has been provided, i.e., 20th of next month and when actually the amount has been paid also stated. For instance, in W.P.No.3485 of 2022 which relates to the Assessment Year 2020-21, for the month of July, August, September and October, the petitioner paid the tax in time, i.e., on 20th day of the next month, therefore, no interest was calculated and demanded. For the rest of the period, since there was a delay ranging from 7 days to 196 days, depending upon the delayed payment, the interest was calculated and demanded.

14. In this context, if we look at Section 50 of the Act, it says that, every person who is liable to pay tax in accordance with the provisions of this Act or the Rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period, for which tax or any part thereof remains unpaid, pay on his own interest at such rate not exceeding 18%.

15. Therefore, it becomes a mandatory one that for the belated payment of the tax, the taxpayer is liable to pay the interest, the maximum percentage of the interest shall be 18%.

16. Assuming that the petitioner has made e-payment through Bank of the petitioner in the credit of the Government Account, when actually that credit has been made in respect of each of the month was the question asked, for which the learned counsel appearing for the petitioner has relied upon calculation sheet. In this regard, for instance, the Assessment Year 2020-21 is concerned, for the month of April 2020, they say that, they deposited on 27.06.2020, correspondingly in every month, there might be some delay except one or two month, even according to the calculation memo given by the petitioner side.

17. Whether the said claim made by the petitioner is correct or not cannot be gone in to by this Court in these writ petitions as it is a factual matrix, which shall be gone into only by the Appellate Authority.

18. This has been rightly pointed out by the learned Government Advocate appearing for the respondents that, under Section 107 of the Act, since the Appeal remedy is available, the petitioner can very well agitate the issue by way of Appeal.

19. In Section 107 of the Act, it is made clear that, any person aggrieved by any decision or order passed under this Act by an Adjudicating Authority may appeal to such Appellate Authority within three months from the date on which, the said decision or order is communicated to such person.

20. Here, even though the impugned demands are claimed as notice for belated payment of tax, in all practical purposes, it is only a decision since the impugned communication has made it clear that, the registered person is requested to pay the amount immediately, therefore, it is a final decision which is reflected in the demand which is impugned herein. Hence, against such decision, the petitioner can verywell file an Appeal under Section 107 of the Act as referred to above, within a period of three months.

21. Since these orders impugned was passed only on 05.01.2022, the petitioner is having limitation to file an Appeal and therefore, this Court feel that, these writ petitions can be rejected with a liberty to the petitioner to file Appeal against the impugned orders within the limitation period.

22. Accordingly, the following orders are passed in these writ petitions :

> "All these writ petitions are liable to be dismissed, accordingly, are dismissed. However, liberty is given to the petitioner to file appeal against the impugned demand to

the Appellate Authority within the limitation period as provided under Section 107 of the Act. No costs. Consequently, connected miscellaneous petitions are closed."

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

tsvn

To
1. The Commissioner of State Tax
Ezhilagam Building,
Kamarajar Road, Chepauk,
Chennai - 600 005.

2. The Assistant Commissioner (ST)
Guindy Assessment Circle,
No.253, 2nd Floor,
Commercial Taxes and Registration Department Building,
Nandhanam, Chennai - 600 035.

3. The Branch Manager, ICICI Bank Ltd.,
Cheteau D Ampa, No.110,
Nelson Manickam Road,
Chennai, Tamil Nadu - 600 029.

4. The Branch Manager, ICICI Bank Ltd.,
110, Prakash Presidum,
Utthamar Gandhi Salai,
Nungambakkam High Road,
Chennai, Tamil Nadu - 600 034.

+4cc to M/s.Akila.S, Advocate, S.R.No.11633
+1cc to Special Government Pleader(Taxes), S.R.No.11250

W.P.Nos.3485, 3489, 3493
and 3497 of 2022

SPD(CO)
CB(15/03/2022)