



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.5105, 5109 & 5111 of 2019

Aruna Hotel Limited,
Represented by its Director,
No.114 & 145, Sterling Road,
Chennai - 600 034.

... Petitioner in all W.P.'s

Vs

The Assistant Commissioner (ST),
Valluvarkottam Assessment Circle,
No.10, Greams Road,
Palaniappa Maligai,
Chennai - 600 010.

... Respondent in all W.P.'s

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the respondent in Notice dated 05.02.2019 in TIN / 33651500033/2019, TNGST/ 1500033/2019 and CST: 24690/2019 respectively and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondent : Mr.V.Prashanth Kiran
Government Advocate

COMMON ORDER

These three Writ Petitions have been filed by the petitioner challenging demands, though styled as notices for various years, in terms of the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'TNVAT Act') (W.P.No.5105 of 2019), the Tamil Nadu General Sales Tax Act, 1959 (in short 'TNGST Act') (W.P.No.5109 of 2019) and Central Sales Tax Act, 1956 (in short 'CST Act') (W.P.No.5111 of 2019).

2.The petitioner is a company and claims to have been in a state of turmoil in terms of its management. Company Petitions had been filed before the Company Law Board under Sections 397 and 398 of the Companies Act, 2013, alleging mismanagement, which allegations had taken several years to resolve.



3. It was only on 12.02.2015 that peace has descended upon the management, and the present management was in a position to take over the reins of the company, take stock and move forward in a peaceful manner settling all statutory liabilities. At that juncture, the petitioner had received notices for arrears of TNVAT, TNGST and CST and had responded to the Department disavowing all liability in this regard.

4. As far as the TNVAT demand is concerned, it had also challenged the orders of assessment giving rise to the demands on the ground that the assessments were themselves irregular. The original assessments for the periods 2006-2007 to 2012-2013 had come to be set aside and had been redone on 07.06.2016. The tax demands are stated to have, admittedly, been settled in full.

5. While this is so, impugned notice dated 05.02.2019 has come to be passed wherein interest has been levied on belated payments of taxes in terms of Section 42(3) of the TNVAT Act. Admittedly, no show cause notice for the levy of interest was ever issued.

6. One feature in the 2016 assessments is that the computations refer to the position that admitted taxes, as per the returns filed under the Act, were itself not settled. In such an instance, the petitioner is liable to pay interest in terms of the Section 42 of the Act in regard to the admitted tax and such a levy is automatic.

7. However, the impugned notice does not make a distinction between the components of the tax being admitted tax & tax levied on additions made in assessment upon which interest has been levied, had this been done, and the assessing authority made a bifurcation as regards the interest related to the belated payment of admitted tax and the interest relating to the tax on added turnover, there would have been no necessity for further discussion in relation to the first category of interest.

8. All that would have remained is for the assessee to make its submission in regard to the second component of interest, that is the interest on the payments of tax on additional turn over. However, this has not been done, as a result that there is no clarity on the bifurcation and consequently, the interest relating to the two components.

9. For this reason, I am inclined to, while rejecting the challenge to notice dated 05.02.2019, direct the petitioner to appear before the Assessing Authority on 17.06.2022, when he shall receive from the Assessing Officer, the bifurcation of the amounts of tax paid and consequent interest payments levied thereupon.



10. The petitioner has also raised a dispute regarding the rate of interest imposed wherein the rate stands enhanced from 1.5% to 2% with effect from 28.05.2013. The petitioner will be permitted to make his submissions in this regard also before the Assessing Authority, who shall consider the same and raise demands afresh categorizing clearly the interest payable on the admitted tax and the interest demanded for the subsequent amounts and the applicable rate.

11. As far as the other two Writ Petitions are concerned, Mr. Prashanth submits that the same position as in the aforesaid paragraph obtain with regard to TNGST and CST as well. This Court is unable to obtain any clarity this position in the absence of assessment orders under TNGST and CST. Let the parties deliberate upon this aspect as well, on the hearing scheduled for 17.06.2022.

12. Needless to say, if the admitted tax has been paid in time, the question of levying interest in 2019 for the remainder of the taxes, after a period of four years when the tax was paid, will not arise as the authorities are expected to have raised demands of interest concurrent with the tax demand or in any event, within a reasonable period of time thereafter. All contentions of the learned counsel for the petitioner are left open to be advanced before the authority in the course of personal hearing.

13. These Writ Petitions are disposed in the above terms. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

kbs

To

The Assistant Commissioner (ST),
Valluvarkottam Assessment Circle,
No.10, Grems Road, Palaniappa Maligai, Chennai - 600 010.

+1cc to Mr. Adithya Reddy, Advocate SR. No. 33466

+1cc to Special Government Pleader (Taxes) SR. No. 34143

W.P.Nos.5105, 5109 & 5111 of 2019

BR (CO)

PR (16/06/2022)