



W.A.Nos.2369 to 2375 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	01.11.2022
Pronounced On	02.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.A.Nos.2369 to 2375 of 2022
and
C.M.P.Nos.18007, 18009 & 18010 of 2022

1. The Joint Commissioner (ST)(North),
Office of the Joint Commissioner of Commercial Tax,
Thousand Lights, Chennai -6.
2. The Assistant Commissioner of Commercial Tax,
Office of the Assistant Commissioner,
Harbour-V Assessment Circle,
Chennai 600 001.

... Appellants in
all W.As.

VS.

C.Vijayakumar

... Respondent in
all W.As.

PRAYER in all W.As.: Writ Appeals filed under Clause 15 of the Letters
Patent to pass an order setting aside the order in W.P.Nos.2775, 2780,
2781, 2784, 2785, 2787 & 2788 of 2020 dated 29.04.2021.



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In all cases

For Appellant : Mr.Haja Nazirudeen
Addl.Advocate General.
For Mr.M.Venkateswaran
Spl.Govt.Pleader (T)
Assisted by Mr.P.Haribabu
Govt.Advocate.

For Respondent : Mr.A.Mahesnath
for M/s.R.N.Amarnath

COMMON JUDGMENT

S.VAIDYANATHAN, J.

And

C.SARAVANAN, J.

The Commissioner of Commercial Tax Department represented by the Joint Commissioner and Assistant Commissioner are the appellants in these appeal.

2. These appeal have been filed against common order dated 29.04.2021 passed by the learned Single Judge of this Court in



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W.P.Nos.2775, 2788, 2780, 2781, 2784, 2785 & 2787 of 2020

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3. Relevant portion of the impugned order dated 29.04.2021 passed by the learned Single Judge, reads as under:-

“12. The petitioner falls within Section 7(b) of the Settlement Act and the 90% payable would have to be computed in line therewith as has been done by the designated authority. The sum total of the demand thus is of a amount of Rs.13,04,279/-. As against the amount of Rs.13,04,279/-, the petitioner has admittedly remitted a sum of Rs.27,46,034/-, which is more than double of the demand payable. Retaining the demands payable for the periods 1994-95 and 1995- 96, of an amount of Rs.13,04,279, the balance shall be refunded to the petitioner within a period of six weeks from today. As a consequence of my order as aforesaid, the attachment of the property in question shall stand lifted forthwith”.

4. The prayer in the respective Writ Petitions are similar. Only the amount offered by the respondent and assessment year are different. For the sake of clarity, the prayer in W.P.No.2781 of 2020 is reproduced sample below as a representative sample:-



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“Writ petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records relating to proceedings of the Respondent in R.C.No.6363/2019/B3-III and quash the same and direct the respondents to receive a sum of Rs.8,06,783/- from the petitioner towards the balance of amount payable for consideration and acceptance of the petitioner's application dated 25.08.2010 made under Section 5(1) of Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2010 for the assessment year 1992-93, and consequently issue Certificate under Section 8 of the Act.”

5. In these Writ Petitions, the respondent had prayed for quashing of the impugned order therein and for a consequential direction to direct the appellants herein to receive a sum of consolidated sum of **Rs.34,59,397/-** over and above a sum of **Rs.27,46,034/-** already paid by the respondent to settle the Sales Tax arrears under the provisions of the **Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2010** (hereinafter referred to as the Settlement Act, 2010).

6. The following Table gives a snapshot of the amounts demanded, agreed to be paid, paid, and the amount ordered to be refunded: -



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W.P.	A.Y	Impugned Orders dated 23.10.2019 in the Writ Petitions	Amount in Rupees paid by the respondent before filing of the Writ Petition	Amount (Total) in Rupees demanded in the order impugned in the Writ Petitions.	Amount Offered by the respondent	Amount in Rupees ordered to be refunded back in the impugned Order.
(1)	(2)	(3)	(4)	(5)	(6)	(7)
2775/2020	1990-91 TNGST	R.C.No.6363/2019/B3-I	3,45,262	9,21,186	4,83,262	-
2780 / 2020	1991-92 TNGST	R.C.No.6363/2019/B3-II	4,01,918	10,20,932	5,16,921	-
2781/2020	1992-93 TNGST	R.C.No.6363/2019/B3-III	7,19,315	16,95,664	8,06,783	-
2784/2020	1992-93 CST.	R.C.No.6363/2019/B3-VII	99,235	3,48,616	2,14,519	-
2785/2020	1993-94 TNGST	R.C.No.6363/2019/B3-IV	5,88,800	16,04,547	8,55,292	-
2787 of 2020	1995-96* TNGST	R.C.No.6363/2019/B3-VI	85,263	1,18,292	21,200	-
2788/2020	1994-95* TNGST	R.C.No.6363/2019/B3-V	5,05,968	11,85,987	5,61,420	-
TOTAL			27,46,304	68,95,224	34,59,397	14,41,755/- [27,46,304-13,04,279]

[*Assessment Year which were available)
and produced before the Writ court)



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7. Thus, by the impugned order, the learned Single Judge has ordered refund of **Rs.14,41,755/-** [27,46,034 - 13,04,279] out of **Rs.27,46,034/-** paid by the respondent.

8. The total amount quantified by the appellants to be paid by the respondent was **Rs.68,95,224/-** towards tax dues. Whereas, in the writ petition, the respondent in his writ petition tacitly admitted a liability of **Rs.62,05,701/-** (27,46,304 + Rs.34,59,397/-) in a bid to settle the sales tax arrears under the provisions of the Settlement Act, 2010.

9. Thus, the scope of dispute in the above writ petitions was confined to only **Rs.6,89,523/-** (68,95,224–62,05,701) as detailed below:-

Amount agreed to be paid by the Respondent	Amount in dispute in the WP
62,05,701 (27,46,304 + 34,59,397)	6,89,523 (68,95,224 – 62,05,701)

10. However, by the impugned order, the learned Single Judge has ordered retention of a sum of **Rs.13,04,279/-** only, even though the respondent himself prayed that the appellants should be directed to



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accept a sum of **Rs.34,59,397/-** over and above a sum of **Rs.27,46,304/-** deposited by the respondent in a bid to settle the arrears of tax liability under the provisions of the Settlement Act, 2010.

11. By the impugned order, the respondent has got an unexpected windfall by way of refund of **Rs.14,41,755/-** [27,46,034 - 13,04,279], which the respondent himself also did not aspire while filing the above writ petitions.

12. The brief facts of the case are that the respondent purchased an extent of land measuring 79 cents and 34,412 sq.ft. comprised in RS.Nos.73/10 & 73/11 at No.21, Melnallathur Village, Tiruvallur Taluk and District in an auction conducted by Tamil Nadu Industrial Investment Corporation Limited (hereinafter referred to as TIIC).

13. The land in question belonged to Tvl.Srinivasa Chemicals Pvt. Ltd (hereinafter referred to as defaulter). The said defaulter was a tax assessee/dealer under the provisions of Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as TNGST Act,1959) and the Central Sales Tax Act, 1956 (hereinafter referred to as CST Act,1956). The



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defaulter had availed a term loan from the TIIC for a sum of Rs.37 lakhs.

The assets of the defaulter including the land were mortgaged in favor of TIIC.

14. The said defaulter had also availed the benefits under the Interest Free Sales Tax Deferral Scheme (IFST Deferral Scheme) during the year 1990 from the Commercial Tax Department. The record indicates that two deferral orders were issued on 20.06.1991 and 30.06.1993 for an amount of Rs.10.22 lakhs and 22.99 lakhs respectively.

15. Under the IFST Deferral Scheme, payment of Sales Tax was deferred for a period of 5 years commencing from 25.10.1990 upto 24.10.1995. The deferred tax amount was treated as an interest free loan to be repaid to the Commercial Tax Department after the aforesaid period as per the deferral orders. The ledgers maintained by the Commercial Tax Department show the tax due from the said defaulter were also produced before us for our perusal.

16. When the time for repayment of the deferred sales tax arose,



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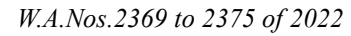
the defaulter requested for re-scheduling the repayment period citing “difficulties on account of adverse market conditions”.

17. Around the same time, the defaulter company had also failed to service the term loan for the property. Due to the default committed TIIC proceeded to auction the assets mortgaged to it. Thus, an auction was held on 01.12.2009. The respondent participated in the said auction and was declared as the highest bidder. Later a formal sale deed was also executed on 10.08.2010 in favour of the respondent.

18. Relevant clause from the sale deed dated 10.08.2010 executed by TIIC in favour of the respondent herein, reads as under:-

“7. The purchaser hereby declares that taxes, levies, statutory and other liabilities etc, if found due in respect of the schedule property shall be borne and paid by the purchaser without any reference to the vendor”.

19. The recital from the above sale deed makes it clear that the purchaser of the property in the auction held on 01.12.2009 was to pay taxes and other statutory liability found in respect of the property without



20. After purchasing the property in auction and after execution of the sale deed dated 10.08.2010, the respondent herein filed applications on 25.08.2010 under Section 5(1) of the Settlement Act, 2010 to settle the tax arrears and for waiver of penalty and interest for the following assessment years under the repealed TNGST Act, 1959 and the CST Act, 1956 in respect of which the said borrower was in arrears of tax:-

<i>Date</i>	<i>Assessment year</i>	<i>Amount</i>
31.01.1990	1990-1991	Rs.3,45,805/-
19.01.1993	1991-1992	Rs.4,01,918/-
16.03.1998	1992-1993	Rs.7,19,315/-
03.04.1998	1993-1994	Rs.5,88,800/-
27.02.1998	1994-1995	Rs.5,05,968/-
27.03.1997	1995-1996	Rs. 85,263/-
16.03.1996	1992-1993	Rs.99,235/-

21. It was submitted before the learned Single Judge that the respondent did not have the original assessment records, and therefore the tax amount due was calculated by the officials of the second appellant in the applications filed under the Settlement Act, 2010. A sum of **Rs.27,46,304/-** was paid through cheques which was encashed by the



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appellants herein.

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22. The case of the respondent before the learned Single Judge was that the order passed by the first respondent in response to the applications filed for the above mentioned assessment years were arbitrary and therefore liable to be quashed.

23. Fact on record indicates that the respondent had earlier filed W.P.Nos.817 to 823 of 2011. In the said writ petitions, the respondent had challenged the notice dated 16.12.2010 issued by the second appellant requesting respondent to make payment of the balance amount with 6% interest for settling the case under the Settlement Act, 2010. On 19.01.2011, a stay was granted in the above writ petitions.

24. During the subsistence of the stay order in W.P.Nos.817 to 823 of 2011, the second appellant herein served Show Cause Notice dated 08.09.2011 on the respondent to show cause as to why the application under the Settlement Act, 2010 should not be rejected as per Section 6(3) of the Act as the payment made was less than 90% of the amount payable. It was submitted that the above notice was not served to the



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address of the respondent.

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25. Thereafter, on 14.11.2017, the first appellant herein had passed an order rejecting the application on two grounds namely:-

- (i) the defaulter had availed the benefits of the IFST (Interest Free Service Tax) Deferral Scheme and hence, ineligible for settlement of arrears under the Settlement Act, 2010; and
- (ii) 90% of the amount payable under the Settlement Act, 2010 was not paid by the respondent”.

26. Thereafter, W.P.No. 817 to 823 of 2011 were taken up for final hearing. Orders dated 14.11.2017 passed by the first appellant herein were withdrawn as it was passed during the subsistence of the stay order.

27. The court thus directed the respondent to appear before the first appellant and answer to the Show Cause Notice dated 08.09.2011. The above writ petitions were finally disposed on 17.09.2019 by directing the first appellant herein to hear the respondent and to thereafter pass orders either accepting or rejecting the applications filed under the Settlement Act, 2010.



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WEB COPY 28. Pursuant to the directions issued by the court in the above writ petition, the respondent herein filed a reply dated 28.09.2019 to the Show Cause Notice dated 08.09.2011 and expressed willingness to pay the balance amount.

29. Thus, an order dated 23.10.2019 was passed by the first appellant herein. By the aforesaid order the first appellant rejected the applications filed by the respondent citing non-payment of 90% of amount payable as per Section 6(3) of the Act.

30. Additionally, it was also observed that the respondent was not eligible to file the application as the respondent was not a "dealer" under the respective tax enactment.

31. Aggrieved by the order dated 23.10.2019 the respondent filed the above mentioned writ petitions in W.P.Nos.2775, 2788, 2780, 2781, 2784, 2785 & 2787 of 2020 which has culminated in the impugned order of the learned Single Judge.



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32. It was submitted by the respondent before the writ court that the rejection order was arbitrary as the Show Cause Notice dated 08.09.2011 did not mention a word about the eligibility of the respondent to file application under the Settlement Act, 2010.

33. It was further submitted that when the court in W.P.Nos. 817 to 823 of 2011 had accepted that the respondent has stepped into the shoes of the original assessee and directed him to appear before the first appellant herein, the application ought not to have been rejected by the first appellant by stating that the respondent was not eligible to file the application under the Settlement Act, 2010.

34. It was also submitted that the first appellant herein ought to have returned the application under Rule 3(5) of the Tamil Nadu Sales Tax (Settlement of Arrears) Rules, 2010 if on scrutinizing the application it was found that the amount was not correctly entered.

35. For all the above mentioned reasons, the respondent prayed for passing orders directing the appellants to receive the balance sum payable, accept the application, issue a certificate under Section 8 of the



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Settlement Act, 2010 and consequently, lift the attachment on the property.

36. Writ petitions were defended by the appellants. It was stated that while passing the order dated 17.09.2019 passed in W.P.Nos.817 to 823 of 2011, the court had directed the appellant herein to pass orders on the application in accordance with the provisions of the Settlement Act, 2010. It was therefore stated, applications were accordingly rejected, as the respondent did not pay 90% of the amount payable under the Act and in any event, the respondent did not fit into the shoes of the original assessee.

37. Finally, it was submitted that the contention of the respondent that it was as per the calculation of the officials of the second appellant that the arrears of sales tax was paid cannot be accepted as it is the duty of the respondent/applicant to verify all the details entered in the application and act according to procedures known to law.

38. We have considered the arguments advanced by the learned Additional Advocate General for the appellants and by the learned counsel for the respondent.



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The point for determination in these Writ Appeals are as under:-

- (i) Whether the respondent was a “dealer” within the meaning of Section 2(1)(a) r/w Section 2(1)(e) of the Settlement Act, 2010 and therefore eligible to file a declaration under the Settlement Act, 2010 or whether the respondent stepped into the shoes of the tax defaulter namely Tvl.Srinivasa Chemicals Pvt. Ltd., while purchasing the assets of the defaulter in an auction.
- (ii) Whether in the facts of the case, the order of the learned Single Judge requires to be interfered or not?

40. Prior to Settlement Act, 2010, a Scheme under the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2006 was there. There was a specific bar for filing an application for settling the dues on a person who had availed deferral and had defaulted. However, under the Settlement Act, 2010, such a restriction is not there. Therefore, under the provisions of the Settlement Act, 2010, the defaulter namely Tvl.Srinivasa Chemicals Pvt. Ltd. would have been entitled to file an application to



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settle the case.

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41. The benefit of the Settlement Act, 2010 is confined only to a person who was and is a "dealer" as defined in the relevant Act as is evident from a reading of Section (2)(1)(a) of the aforesaid Act. The definition reads as under:-

Section 2(1)(a) : "applicant" means a dealer as defined in the relevant Act.

42. The expression "relevant Act" has been defined in Section 2(1)(e) of the Settlement Act, 2010 as follows:-

Section 2(1)(e) : "relevant Act" means,-

- (i) the repealed Tamil Nadu General Sales Tax Act, 1959
- (ii) the repealed Tamil Nadu Sales Tax (Surcharge) Act, 1971;
- (iii) the repealed Tamil Nadu Additional Sales Tax Act, 1970;
- (iv) the Central Sales Tax Act, 1956 and includes the rules made or notifications



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issued thereunder.

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43. To be eligible for the benefit of the Settlement Act, 2010, the person should have been a "dealer" within the meaning of Section 2(1)(a) r/w Section 2(1)(e) of the said Act.

44. The respondent herein (i.e. petitioner in W.P.Nos.2784, 2775, 2780, 2781, 2788, 2785 & 2787 of 2020) was not a "dealer". The respondent has also not stepped into the shoes of the defaulting dealer viz. Tvl.Srinivasa Chemicals Pvt. Ltd., to avail the benefit of the Settlement Act, 2010.

45. The respondent has also not produced any documents to substantiate that the respondent was a "dealer" for the purpose of Section 2(1)(a) r/w Section 2(1)(e) of the Act.

46. The respondent herein was merely an auction purchaser who purchased the stressed asset of defaulter Tvl. Srinivasa Chemicals Pvt.

Ltd. in *"as is where is condition"* for a bid amount of Rs.70,00,000/- in



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the auction held on 01.12.2009 by the TIIC.

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47. The respondent also undertook to settle all the other dues and tax arrears at the time of execution of sale deed. Therefore, no concession was available to the respondent, since the respondent was not a “dealer” within the meaning of the provisions of the Settlement Act, 2010.

48. Therefore, the application of the respondent ought not to have been entertained by the first appellant herein, namely, the Joint Commissioner (Sales Tax) North, as a Designated Authority under the provisions of the Settlement Act, 2010.

49. However, considering the fact that concession was given by entertaining the applications filed by the respondent under the aforesaid Act and considering the fact that the order of the Designated Authority was not challenged by the Commercial Tax Department in the manner known to law, we do not wish to deny the partial benefit conferred on the respondent *vide* impugned order dated 29.04.2021 under the Settlement Act, 2010 impugned in the W.P.Nos. 2784, 2775, 2780, 2781, 2788, 2785 & 2787 of 2020.



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50. It was not open for the respondent to shift the burden on the appellants to furnish the details of the assessment orders. Assessment Orders would have been passed by the Assessing Officer during the relevant assessment years under the provisions of TNGST Act, 1959 and CST Act, 1956. During the course of hearing, the originals of the records and ledgers maintained by the Commercial Tax Officer showing the assessment made on the defaulter Tvl. Srinivasa Chemicals Pvt. Ltd were produced.

51. The respondent has purchased litigated property knowing fully well that there were arrears/ tax dues from the said defaulter Tvl.Srinivasa Chemicals Pvt. Ltd. to the Commercial Tax Department. The above company was a tax defaulter under the deferral scheme sanctioned vide deferral orders dated 20.06.1991 and 30.06.1993, which was given as an interest free loan.

52. The respondent's own case before the learned Single Judge



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was to direct the appellants to accept a sum of **Rs.34,59,379/-** over and above **Rs.27,46,304/-** already paid by the respondent before filing writ petitions along with applications filed under the Settlement Act, 2010.

53. Thus, the respondent himself agreed to pay a sum of **Rs.62,05,701/-** (Rs.34,59,379/- + Rs.27,46,394/-) as against a sum of **Rs.68,95,224/-** (Rs.27,46,304/- + Rs.34,59,397/-) determined in the impugned orders dated 23.10.2019 of the first appellant which were challenged before the writ court in W.P.Nos. 2784, 2775, 2780, 2781, 2788, 2785 & 2787 of 2020.

54. Even if the writ petition was to be allowed, the respondent could have been directed to pay a sum of **Rs.34,59,379/-** over and above **Rs.27,46,304/-** as was prayed by the respondent in the writ petitions.

55. Therefore, in our view, direction in the impugned order of the Court directing a refund of **Rs.14,41,755/-** out of **Rs.27,46,304/-** paid by the respondent deserves to be interfered. The order of the learned Single Judge directing appropriation of the amounts only to those years for



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which assessment orders were available cannot be countenanced.

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56. This was also not the relief was not even sought for by the respondent in W.P.Nos. 2784, 2775, 2780, 2781, 2788, 2785 & 2787 of 2020.

57. Under these circumstances, order directing the appellants herein to refund a sum of **Rs.14,41,755/-** from and out of **Rs.27,46,304/-** to the respondent has to be set aside.

58. Therefore, we set aside the impugned order dated 29.04.2021 passed by the learned Single Judge. Consequently, we dismiss the writ petition filed by the respondent and direct the respondent to pay the differential sum of **Rs.41,48,920/-** (68,95,224 - 27,46,304) to the Commercial Tax Department within a period of 8 weeks from the date of receipt of a copy of this order.

59. In case the respondent fails to pay the aforesaid amount within such time, the appellants/Commercial Tax Department are at liberty to initiate appropriate revenue recovery proceedings to recover the tax dues



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penalty and interest etc. of the defaulter Tvl.Srinivasa Chemicals Pvt.

Ltd. by bringing the assets purchased by the respondent to sale.

60. This writ appeal stands allowed with the above observation.

No costs. Consequently, connected miscellaneous petitions are closed.

(S.V.N.,J.)

(C.S.N.,J.)

02.12.2022

Intex : Yes/No
Internet : Yes/No
Speaking : Non-speaking Order
kkd



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S.VAIDYANATHAN, J.
and
C.SARAVANAN, J.

kkd

Pre-delivery Common Judgment in
W.A.Nos.2369 to 2375 of 2022

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