IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	12.11.2021
Pronounced On	16.02.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.21878 of 2021
and
W.M.P.No.23071 of 2021

(Through Video Conferencing)

Sri Sakthi Murugan Tex,
Rep. by its Partner O.M.Vijay,
22/36, Chetti Thoppu,
Erode Road, Perundurai. ... Petitioner

Vs.

The Assistant Commissioner (CT),
Perundurai, Erode District. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the entire records of the respondent in TIN No.33062924560/2009-10 dated 16.09.2021 and quash the proceedings passed therein.

For Petitioner : Mr.A.P.Srinivas

For Respondent : Ms.Amirta Poonkodi Dinakaran
Government Advocate

O R D E R

The petitioner has challenged the impugned proceedings of the respondent attaching bank account of the petitioner pursuant to the re-assessment order passed under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "TNVAT Act" for brevity) for the Assessment Year 2009-2010. Originally, while filing returns under Section 21 of the TNVAT Act, the petitioner had disclosed the taxable turnover of Rs.44,09,617/- and had paid the proportionate tax of Rs.1,76,385/-.

2. In terms of Section 22 of the TNVAT Act, there was a deemed assessment. Thereafter, a notice was issued to the petitioner on 18.01.2016, wherein, the taxable turnover of the

petitioner was sought to be increased to Rs.98,15,837/- and a proposal was made to show cause as to why a sum of Rs.5,17,835/- should not be demanded from the petitioner and after adjusting a sum of Rs.1,76,385/-, why a sum of Rs.3,41,450/- should not be recovered from the petitioner. Under these circumstances, an order came to be passed on 25.02.2016 for the aforesaid Assessment Year and a gross tax liability of Rs.3,92,633/- was determined on the taxable turnover of Rs.98,15,837/- and after adjusting the aforesaid amount of Rs.1,76,385/-, the net tax of Rs.2,16,248/- was determined and demanded from the petitioner.

3. It is the case of the petitioner that within thirty days from the date of receipt of the aforesaid order, the petitioner was remitted differential tax of Rs.2,16,248/- on 24.03.2016. The petitioner thereafter has received a notice under Section 42 (3) of the TNVAT Act, whereby, interest on the differential tax paid for a sum of Rs.2,16,248/- has been demanded for a period of 61 months amounting to Rs.2,63,823/-. Thereafter, another notice dated 16.09.2021 was issued to the petitioner on the delayed payment of interest, whereby, the interest has been re-quantified as Rs.3,09,975/- which is led to a notice for attaching the bank account of the petitioner.

4. Appearing on behalf of the petitioner, the learned counsel for the petitioner submits that the question of demanding interest on the differential amount arrived pursuant to re-assessment under Section 27 of the TNVAT Act cannot be countenanced in the light of Section 42(3) of the TNVAT Act. He submits that the differential tax was also paid by the petitioner within a period of thirty days from the date of re-assessment under Section 27 of the TNVAT Act and therefore the petitioner cannot be saddled with further interest liability.

5. Opposing the prayer in this writ petition, the learned Government Advocate appearing for the respondent submits that the Writ Petition is liable to be dismissed as the petitioner has an alternate remedy by way of appeal under Section 51 of the TNVAT Act and therefore, the petitioner should be relegate to approach the Appellate Commissioner. The learned Government Advocate further submits that even otherwise, the petitioner is liable to pay interest under Section 42(3) of the TNVAT Act. She further submits that interest is consequential and such interest is payable from the date on which the tax was originally payable.

6. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondent and perused the records.

7. As a dealer, the petitioner was required to file a correct return under Section 21 of the Tamil Nadu Value Added Tax

Act, 2006 read with Rule 7 of the Tamil Nadu Value Added Rules, 2007. Section 21 of the Tamil Nadu Value Added Tax Act, 2006 reads as under:-

> 21.Filing of Returns-
>
> Every dealer, registered under this Act, shall file return, in the prescribed form showing the total and taxable turnover within the prescribed period, in the prescribed manner along with the prescribed documents and proof of payment of tax. The tax under this section shall become due without notice of demand to the dealer on the last date of the period for filing return as prescribed.

8. In this case, admittedly, the petitioner had disclosed a lower taxable turnover and therefore paid lesser tax. The petitioner was thereafter issued with a notice dated 18.01.2016 under Section 27(1)(a) read with Section 22(3) of the TNVAT Act, 2006. By an order dated 25.02.2016, the proposal contained in the above notice was confirmed and thus the petitioner was held liable to pay a gross amount of Rs.3,92,633/- as tax due for the Assessment Year 2009-2010 and after adjusting an amount of Rs.1,76,385/- already paid, the balance tax payable by the petitioner was determined as Rs.2,16,248/-. The petitioner has also paid the said amount on 24.03.2016.

9. Payment of interest is consequential. A reference may be made to Section 42 of the TNVAT Act, 2006. Section 42 of the Tamil Nadu Value Added Tax Act, 2006 reads as under:-

> 42.Payment and Recovery of tax, penalty, etc-
>
> (1) Save as otherwise provided for in section 21, the tax assessed or 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. 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.

(2) Any tax assessed on or has become payable by, or any other amount due under this Act from a dealer or person and any fee due from him under this Act, shall, subject to the claim of the Government in respect of land revenue and the claim of the Agriculture and Rural Development Bank in regard to the property mortgaged to it under sub-section (2) of section 28 of the Tamil Nadu Co-operative Societies Act, 1983 (Tamil Nadu Act 30 of 1983), have priority over all other claims against the property of the said dealer or person and the same may without prejudice to any other mode of collection be recovered, --

(a) as land revenue, or

(b) on application to any Magistrate, by such Magistrate as if it were a fine imposed by him: Provided that no proceedings for such recovery shall be taken or continued as long as he has, in regard to the payment of such tax, other amount or fee, as the case may be, complied with an order by any of the authorities to whom the dealer or person has appealed or applied for revision, under sections 51,52,54,57,58,59 or 60.

(3) 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 two percent] per month of such amount for the entire period of default:

Provided that if the amount remaining unpaid is less than one hundred rupees and the period of default is not more than a month, no interest shall be paid:

Provided further that where a dealer or person has preferred an appeal or revision against any order of assessment or revision of assessment under this Act, the interest payable under this sub-section, in respect of the amount in dispute in the appeal or revision, shall be postponed till the date of disposal of the appeal or revision, as the case may be, and shall be calculated on the amount that becomes due in accordance with the final order passed on the appeal or revision as if such amount had been specified in the order of assessment or revision of assessment as the case may be.

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.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

arb/jen

To

The Assistant Commissioner (CT),
Perundurai,
Erode District.

+1cc to Mr.A.P.Srinivas, Advocate, SR.No.9985 (24/03/2022)

+1cc to Special Government Pleader(Taxes),SR.No.10407(24/03/2022)

W.P.No.21878 of 2021
and
W.M.P.No.23071 of 2021

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