BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **18.03.2022**
CORAM:
THE HONOURABLE MR.JUSTICE **C.SARAVANAN**
W.P.(MD) No.1113 of 2021

M/s.Shanthi Guru Marketing,
represented by its Proprietor V.Shripal Sanghvi
No.53, Chinnakammala Street,
Trichy - 08. ... Petitioner

/vs./

1.The Additional Commissioner (Review and Appeal),
Office of the Principal Secretary/Commissioner of Commercial Taxes,
Ezhilagam,
Chepauk, Chennai-5.

2.The Joint Commissioner (ST),
Trichy Division,
Trichy.

3.The Assistant Commissioner (ST),
Mailamchandai-I Assessment Circle,
Trichy. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in Revision Petition No.RA1/RP/17/2019 and quash the order dated 23.12.2020 sustaining the levy of interest under section 42(3) of the TNVAT Act as unlawful, invalid and contrary to the provisions of the Act and further direct the 3rd respondent to refund the excess amount wrongly adjusted against payment of interest pursuant to his proceedings dated 31.05.2019.

For Petitioner : Mr.R.D.Ganesan
For Respondents : Mr.J.K.Jayaseelan
Government Advocate

ORDER

The petitioner has filed this writ petition against the order passed by the 1st respondent/Revisional Authority dated 23.12.2020.

2.By the impugned order, the 1st respondent has upheld the order passed by the 2nd respondent dated 05.08.2019. Prior to that, the 3rd respondent had passed an order dated 31.05.2019 levying interest under Section 42(3) of the TNVAT Act, 2006.

3.The case of the petitioner before this Court is that no doubt the petitioner has failed to file the returns for the month of June 2017 nevertheless the petitioner kept sending repeated reminders to the respondents to adjust tax from the refund ie., due to the petitioner in terms of the order dated 18.05.2017 of the Appellate Commissioner in A.P.No.180 of 2016 for the assessment year 2012-13. As per the aforesaid order, the petitioner was entitled for refund of Rs.24,19,835/-.

4.It is further submitted that the petitioner kept sending repeated reminders and despite the aforesaid reminders, the petitioner was issued with an order dated 31.05.2019 by the 3rd respondent, whereby the amount that was due/refund to be refunded back to the petitioner in terms of the aforesaid order of the 3rd respondent was adjusted towards the tax liability of Rs.17, 91, 300/- and a sum of Rs.7,75,040/- towards interest under Section 42 (3). Thus, levying the balance of Rs.1,48,636/- to be paid by the petitioner.

5.The learned counsel for the petitioner submits that the order, which came to be passed confirming the tax liability of Rs.17,91,300/- itself, was not served on the petitioner. Be that as it may, the learned counsel for the petitioner submits that the adjustment of interest under Section 42 (3) of the Act was improper as the respondents should have passed appropriate orders under Rule 14(18) of the Tamil Nadu Value Added Rules, 2007. On the other hand, it is submitted that the respondents have calculated interest at 2% under Section 42(3) of the Act and have demanded a balance amount of Rs.1,48,636/- .

Details	*Amount in Rs.*
Tax Due as per return on schedule 2 goods	*Rs.17,91, 300/-*
Less:Advance Tax as per return	*Nil*
Net Tax payable as per return	*Rs.17,91,300/-*
Tax paid (adjusted as per M Reg.p.g.no.3/2018, as per Assessment Order 2012-13 dated 27.06.2018	*Rs.17,91,300/-*
Tax to be paid	*Nil*
Interest U/s 42(3)	*Rs.7,75,040/-*
Interest paid	*Rs.6,26,404/-*
Interest to be paid	*Rs.1,48,636/-*

6.It is submitted that the adjustment of the amount towards interest itself is unwarranted as the Department was having a sum of Rs.24,19,835/- of the petitioner. It is further submitted that the appeal against the order of the Appellate Commissioner was also dismissed by the Tribunal on 09.01.2013 in Appeal No.371 of 2018 for the aforesaid assessment year and no further appeal was preferred by the Revenue before this Court. It is submitted that since the issue had attained finality and since the petitioner’s aforesaid amount was lying with the respondents, there is no justification in levying interest.

7.Opposing the prayer, the learned Government Advocate for the official respondents submits that there is a statutory appeal before this Court under Section 59 of the TNVAT Act, 2006 and since the petitioner has failed to file a statutory appeal before this Court, this writ petition is liable to be dismissed by giving liberty to the petitioner to workout the remedy before the Division Bench of this Court.

8.The learned counsel for the petitioner by way of rejoinder submits that alternate remedy under Section 59 of the said Act will apply only in the case, where there is a *suo motu* revision under Section 55 of the TNVAT Act and therefore, alternate remedy under Section 59 of the TNVAT Act, is not available. It is submitted that there is no alternate remedy except to file a writ petition under Article 226 of the Constitution of India.

9.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondents.

10.The facts are not in dispute. The petitioner was entitled to refund of Rs.24,19,835/-, pursuant to an order of the Appellate Commissioner in A.P.No.180 of 2016 dated 18.05.2017. The aforesaid order has also been affirmed by the Appellate Tribunal by its order dated 09.01.2019 in Madurai Tribunal State Appeal No.371 of 2018. Thus, the petitioner's amount was available with the respondents for adjustment.

11.In this case, the petitioner had admittedly not filed a return for the month of June 2017 and later sent representations to the respondents to adjust the tax against the tax due. The order came to be passed on 27.06.2018 by the 3rd respondent as the Original Authority. Though a copy of the order has not been served on the petitioner, the fact remains that the petitioner has also not contested the same and is amenable for the tax liability arrived at therein. Since the petitioner's amount was already with the respondent Department, the imposition of interest under Section 42 (3) of the Act at 2% per annum appears to be unreasonable and unwarranted. On the contrary, after adjustment of the aforesaid amount, the respondents should have refunded the balance amount of Rs.6,26,404/- together with interest at 2% in terms of Section 42 (5) of the aforesaid Act.

12.Under these circumstances, I am inclined to allow this writ petition with a direction to the 3rd respondent to refund a sum of Rs.6,26,404/- together with interest at 2% from the date of 1st July 2017. This exercise shall be completed by the 3rd respondent within a period of 6 weeks from the date of receipt of a copy of this order either by way of pay order or by crediting the amount in the Electronic Cash Register of the petitioner. The respondents shall also pay the proportionate interest on the entire amount at 2% in terms of Section 42 (5) of the Act.

13.This writ petition stands allowed, in terms of the above observations. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2022
Sub Assistant Registrar(CS)

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To

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Office of the Principal Secretary/Commissioner of Commercial Taxes,
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Chepauk, Chennai-5.

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Trichy Division,
Trichy.

3.The Assistant Commissioner (ST),
Mailamchandai-I Assessment Circle,
Trichy.

+1 CC to M/s.R.D.GANESAN, Advocate (SR-13296[F] dated 21/03/2022)

+1 CC to M/s.SPL GP (SR-13441[F] dated 22/03/2022)

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RD(07.04.2022) 4P 6C