IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2023

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

W.P.No.1689 of 2022
and
W.M.P.No.1832 of 2022

Tvl.Sathiyamoorthy & Co.,
Represented by its Managing Partner,
S.Aravindan. ... Petitioner

Vs

The Assistant Commissioner (ST) (FAC),
Brough Road Circle,
Erode. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari , to call for the records on the files of the respondent in TIN:33253001231/2014-15 dated 29.10.2021 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.C.Harsha Raj
Additional Government Pleader

ORDER

The petitioner is aggrieved by the Impugned Demand of Penal Interest of Rs.74,76,117/- on account of delayed payment for balance tax of Rs.48,50,479/- for the Assessment Year 2014-2015.

2. The petitioner a Works Contractor was engaged by Public Works Department (hereinafter referred to as PWD). The assessment for the Assessment Year 2014-2015 was completed by the Assessing Officer by an Assessment Order dated 30.12.2019, whereby it was concluded that the petitioner had paid a sum of Rs.59,27,470/- in excess.

3. In terms of the aforesaid order, the petitioner was also issued with Form-P entitling the petitioner for refund of the aforesaid amount of Rs.59,27,470/- Thereafter, another Assessment Order came to be passed for the same Assessment Year on 16.07.2020, wherein the Assessing Officer concluded that the petitioner was entitled to a refund of Rs.60,83,456/-. Consequently, another Form-P was issued.

4. Thereafter, a notice dated 01.09.2020 was issued to the petitioner, wherein it was stated that out of the value of the TDS Certificates in Form T and R produced for Rs.72,67,837/-, a certificate for Rs.48,50,479/- which is said to have been issued by the Executive Engineer (PWD), Building (C&M) Division, Medical Works, Salem – 7 was actually not issued by the authority and that no VAT was deducted for payment of Rs.24,25,23,927/- during 2014-2015 and that it came to the knowledge of the Department during verification of the certificate in Form T and R produced by the petitioner for the Assessment Year 2014-2015.

5. The aforesaid exercise culminated in an order dated 02.08.2021. The petitioner was thus called upon to pay a sum of Rs.48,50,479/-. Since Recovery Notice was issued, the petitioner also complied with the same on 21.09.2021. After the amount was paid, a notice dated 06.10.2021 was issued to the petitioner. Thereafter, the Impugned Order came to be passed on 29.10.2021 demanding Penal Interest of Rs.74,76,117/- on account of delayed payment for balance tax of Rs.48,50,479/- for the Assessment Year 2014-2015. The petitioner has thus questioned the levy Penal Interest on the petitioner.

6. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

7. The principal liability to Deduct Tax Deduction at Source (TDS) and pay the same to the exchequer was on PWD for the payments made on the bills raised by the petitioner. This was the requirement of Section 13 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as TNVAT Act, 2006), unless the exceptions were attracted.

8. In case there was a failure to deduct tax at source under sub-section (1) to Section 13 of the TNVAT Act, 2006. Therefore, consequences under sub-section (8) stared only at the person paying the amount to the Works Contractor on the bills raised by the latter. Amount of tax payable shall be recovered from such person and all provisions of this Act for the recovery of tax including those relating to levy of penalty and interest shall apply only against the person specified under sub-section (1) or sub-section (2) to Section 13 of the TNVAT Act, 2006.

9. Sub-section (8) to Section 13 of the TNVAT Act, 2006 reads as under:-

> *"If any person contravenes the provisions of sub-section (1) or sub-section (2), the whole amount of tax payable shall be recovered from such person and all provisions of this Act for the recovery of tax including those relating to levy of penalty and interest shall apply, as if the person is an assessee for the purpose of this Act."*

10. Thus, the failure on the part of PWD attracted the provisions of TNVAT Act, 2006 in terms of sub-section (8) to Section 13 of the TNVAT Act, 2006.

11. If at all the amount of interest that was to be recovered at 2% was on the person who committed the aforesaid default as is evident from reading of sub clause (5) to Section 13 of the TNVAT Act, 2006, which reads as under:-

> *"any person who contravenes the provisions of sub-section (1) or sub-section (2), shall pay, in addition to the amount required to be deducted and deposited, interest at two percent per month of such amount for the entire period of default."*

12. Thus, there is no merits in the Impugned Order. Accordingly the Impugned Order is liable to be set aside. It is set aside. However, liberty is given to the respondent to recover the interest in the manner known to law form the PWD.

13. The writ petition stands allowed with the above observations and liberty. No cost. Consequently, connected miscellaneous petition is closed.

09.08.2023

Neutral Citation: Yes/No
Speaking/Non-Speaking Order
rgm

To

The Assistant Commissioner (ST) (FAC),
Brough Road Circle,
Erode.

C.SARAVANAN, J.

rgm

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