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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.11903 of 2022

Swathy Chemicals Ltd.,
Represented by its Director,
No.7, Parthasarathy Gardens,
Alwarpet, Chennai – 600 018. .. Petitioner

Vs.

1.The Joint Commissioner III (SMR) of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The Assistant Commissioner (ST),
Royapettah Assessment Circle,
Fanepet, Nandanam,
Chennai – 600 035. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 2nd respondent to pay the petitioner the interest amount of Rs.6,21,919.74/- on the refund of Rs.2,28,928.00/- paid on 22.09.2021, along with interest thereon at 12% p.a.

For Petitioner : Ms.Maithili
for Ms.S.Suneetha

For Respondents : Mr.V.Prashanth Kiran
Government Advocate

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O R D E R

The petitioner has filed this Writ Petition to direct the 2nd respondent to pay the petitioner the interest amount of Rs.6,21,919.74/- on the refund of Rs.2,28,928.00/-.

2.The petitioner had succeeded before the Appellate Assistant Commissioner(CT)-IV by an order dated 20.01.1997. Pursuant to the aforesaid order, the petitioner became entitled to refund of a sum of Rs.2,42,405/-. However, the amount was not refunded to the petitioner. Under these circumstances, the petitioner filed W.P.No.10928 of 1998.

3.Meanwhile, the respondent-Commercial Tax Department wanted to revise the order of the Appellate Assistant Commissioner dated 20.01.1997. Therefore, the respondent-Commercial Tax Department issued show cause notice dated 04.05.1998 bearing reference SMR No.452/98, seeking to revise the order of the Appellate Assistant Commissioner (CT)-IV.

4.Meanwhile, by an order dated 13.02.2003, this Court passed the following order in W.P.No.10928 of 1998 and directed the respondent to

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refund the amount of Rs.2,42,405/- within a period of one month from the date of production of the order with interest at 12% per annum from 28.01.1998 till the date of payment as the Sales Tax officials are charging 24% for belated payment. Relevant portion of the order reads as under:

> "4.Since, the order directing to refund the amount is not stayed or the order passed on which basis the refund order is given also not stayed, the petitioner is entitled for refund. Hence, the respondent is directed to refund the amount of Rs.2,42,405/- within a period of one month from the date of production of this order with interest at 12% per annum from 28.01.1998 till the date of payment as the Sales Tax officials are charging 24% for belated payment."

5.Giving effect to the order of this Court dated 13.02.2003 in W.P.No.10928 of 1998, the respondent Commercial Tax Department also refunded a sum of Rs.2,22,818/- to the petitioner by communication dated 20.03.2003, bearing Reference Rc.No.980/98 A. Under these circumstances, the petitioner sent a representation and asked the respondent-Commercial Tax Department to pay interest as was ordered by this Court by the order dated 13.02.2003 in W.P.No.10928 of 1998.

6.Meanwhile, by an order dated 28.05.2003, the proposal

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containing show cause notice dated 04.05.1998 seeking to revise the order of the Appellate Assistant Commissioner (CT)-IV in AP.No.188/95 dated 20.01.1997 was passed. The order was revised. A consequential order was also passed on 05.12.2003 by 3rd respondent therein – the Deputy Commercial Tax Officer, Royapettah II Assessment Circle, Chennai.

7.This was challenged by the petitioner directly before this Court in W.P.No.35839 of 2003. This Court by its interim order dated 19.12.2003, directed the petitioner to deposit 50% of the amount demanded before the 3rd respondent therein – the Deputy Commercial Tax Officer, Royapettah II Assessment Circle, Chennai, within a period of eight weeks. This was also complied by the petitioner by depositing a sum of Rs.2,28,928/-. It was stated that the amount deposited was 50% of the tax amount.

8.Meanwhile, W.P.No.35839 of 2003 and the two other connected W.P.Nos.6254 and 9363 of 2004 filed by the petitioner were disposed of by this Court by its common order dated 17.03.2021.

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9.After examining the records, a detailed order came to be passed after tracing out the history. In paragraph Nos.23 & 24, W.P.No.35839 of 2003 was allowed and the order dated 20.01.1997 of the Appellate Commissioner was restored. In the light of the order passed in W.P.No.35839 of 2003, W.P.No.9363 of 2004 was closed. The Court also held that the petitioner is entitled for interest not only on 50% of the amount paid back by the petitioner but also interest as was ordered in W.P.No.10928 of 1998 vide order dated 13.02.2006.

10.In this connection, it will be useful to refer paragaph Nos.29 to 31, wherein it has been held as under:

> "29.In the counter affidavit filed by the respondent, reliance has been placed on the order passed by the Joint Commissioner dated 28.05.2003, restoring the original assessment order and therefore, it is submitted that prayer for payment of interest does not arise, as it is the petitioner, who has to pay a sum of Rs.4,57,856/- as per the order passed by the Joint Commissioner, and they had paid only 50% of the tax, which has been demanded and the petitioner has retained the balance amount of 50% of the tax due to the Government from 29.08.2003. The order passed by the Joint Commissioner dated 28.05.2003, has been set aside by us in W.P.No.35839 of 2003. Therefore, the contention advanced by the respondent for refusing to pay interest by relying

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upon the order of the Joint Commissioner is no longer tenable. **Therefore, the petitioner is entitled for payment of interest.** However, on account of the events, which have taken place in the interregnum, 50% excess tax, which was refunded has been paid back by the petitioner to the Department and the remaining 50% is stated to be lying with the petitioner from 29.08.2003. Therefore, it is necessary that the interest should be re-worked taking note of the events, which have taken place, after the order passed by the first appellate authority and the order passed by the Joint Commissioner in exercise of suo motu revision and also the fact that 50% of the amount of excess tax, which was initially refunded, has been paid back by the petitioner to the Department. Further, the respondent-Department cannot deny payment of interest to the petitioner, in the light of the positive direction in W.P.No.10928 of 1998 dated 13.02.2006 wherein, the Court issued a positive direction to pay the interest at 12% per annum.

30.For all the above reasons, W.P.No.6254 of 2004 is allowed and the respondent is directed to refund 50% of the excess tax, which was paid back by the petitioner, pursuant to the order of the Joint Commissioner dated 28.05.2003, within a period of 30 days from the date of receipt of a copy this order and then re-compute the interest and intimate the petitioner about the interest, which is payable within a period of 10 days from the date of receipt of a copy of this order and on receipt of the computation, it will be open to the petitioner to point out any discrepancies, if any, within 7 days thereafter and intimate the Department after which, the Department shall pay the interest amount within 30 days

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thereafter.

31.In the result,

(i) W.P.No.35839 of 2003 is allowed, the order passed by the first respondent dated 28.05.2003, is set aside and the order passed by the first appellate authority, dated 20.01.1997 is restored;

(ii) In the light of the order passed in W.P.No.35839 of 2003, no separate orders are required in W.P.No.9363 of 2004 and accordingly, the same is closed; and

(iii) W.P.No.6254 of 2004 is allowed and the respondent is directed to refund 50% of the excess tax, which was paid back by the petitioner, pursuant to the order of the Joint Commissioner dated 28.05.2003, within a period of 30 days from the date of receipt of a copy this order and then re-compute the interest and intimate the petitioner about the interest, which is payable within a period of 10 days from the date of receipt of a copy of this order and on receipt of the computation, it will be open to the petitioner to point out discrepancies, if any, within 7 days thereafter and intimate the Department after which, the Department shall pay the interest amount within 30 days thereafter. No costs. Consequently, connected miscellaneous petition is closed."

11.Ultimately, in compliance with the order of this Court, the 2nd respondent had issued communication dated 30.11.2021 undertaking to refund a sum of Rs.6,21,550/- under Section 24(4) of the TNGST Act, 1959 as per the order of this Court dated 17.03.2021 passed in

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W.P.Nos.35839 of 2003 and 6254 & 9363 of 2004. However, after questioning the aforesaid letter / communication on 30.11.2021, the 2nd respondent has issued revised communication dated 21.12.2021 bearing reference Rc.299/2021/A3. The revised calculation that has been given along with the aforesaid communication reads as under:

INTEREST CALCULATION STATEMENT

No. of days	Percentage of Interest	Refund Amount	Total Interest as on 21.03.2003
1867	12%	Rs.2,22,818-00	Rs.1,36,768-00

Date of receipt of order copy	19.04.2021
90 days	90 days

To be paid	18.07.2021
E-payment settled dated	22.09.2021
No.of days Delay in payment (19.07.2021 to 21.09.2021)	64 days

Interest Due

$$\frac{\text{Rs.}2,22,818.00 \text{ X } 64 \text{ X } 12}{365 \text{ X } 100} = 4,6,88.00$$

No.of days / years delay	Percentage of Interest	Refund Amount	Total Interest as on 21.09.2021
19.07.2021 to 21.09.2021 (64 days)	12% p.a.	Rs.2,28,928.00	Rs.4,688.00

Total Interest Due Rs.1,41,456.00

12.It is the contention of the petitioner that the petitioner is entitled

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to interest at Rs.6,21,919.74/-. On the other hand, the contention of the respondents is that the petitioner is entitled to only Rs.1,41,456/-. The communication of the 2nd respondent is that a stay was in operation and till it was set aside by this Court by its order dated 17.03.2021 no interest is payable and therefore, the petitioner is not entitled for interest during the aforesaid period.

13.Heard the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for respondents.

14.There is no merits in the contention of the Commercial Tax Department that the petitioner is not entitled to the interest during the pendency of the proceeding before this Court in W.P.No.35839 of 2003. Merely because the order dated 20.01.1997 of the Appellate Assistant Commissioner was revised by the Joint Commissioner vide order dated 28.05.2003 which was affirmed vide order dated 05.12.2003 pursuant to the show cause notice dated 04.05.1998 would not mean that the petitioner is not entitled to interest during the aforesaid period. Merely because the Department had revised the order of the Appellate Assistant Commissioner dated 20.01.1997 in AP.No.CST 188/95 would not mean

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the petitioner is not entitled to interest. Once the order of the Joint Commissioner has been restored, the petitioner is entitled to interest as calculated by the petitioner which was also confirmed by the 2nd respondent in its communication dated 30.11.2021.

15.Therefore, this Writ Petition has to be allowed and is accordingly allowed. The respondents are directed to refund the interest amount of Rs.6,21,919.74/- after adjusting any amount if any paid towards interest during the interregnum, within a period of two weeks from the date of receipt of a copy of this order. No costs.

09.08.2023

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1.The Joint Commissioner III (SMR) of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The Assistant Commissioner (ST),
Royapettah Assessment Circle,
Fanepet, Nandanam, Chennai – 600 035.

C.SARAVANAN, J.

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