BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.A.(MD) No.1667 of 2023
and
C.M.P.(MD) No.12849 of 2023

The Assistant Commissioner (CT) II
Thanjavur Assessment Circle
Sachidanantha Moopanar Road
Commercial Tax Building
Thanjavur ... Appellant

-vs-

Senthil Oxygen (P) Limited
rep.by its Managing Director
J.Senthil Kumar
S.F.No.39/6, 39/7, Plot Nos.6 & 7
Vallam to Orathanadu Road
Thirukkanurpatti Post
Thanjavur District ... Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 18.11.2019, passed in W.P.(MD) No.12228 of 2018, on the file of this Court.

For Appellant : Mr.N.Satheesh Kumar
Additional Government Pleader

For Respondent : Mr.S.Venkatesh

J U D G M E N T

[Judgment of the Court was made by V.LAKSHMINARAYANAN, J.]

This writ appeal is directed against the order of the learned Single Judge, dated 18.11.2019, passed in W.P.(MD) No.12228 of 2018.

2. The short issue for consideration in this writ appeal is whether the Government is entitled to interest on delayed payment, for the erroneous demand made by it.

3. The respondent / writ petitioner was called upon to pay a sum of Rs.36,61,153/- towards tax and penalty and interest up till 18.02.2014. In default, he was warned that his property would be brought for auction. Challenging the same, he filed a writ petition in W.P.(MD) No.3813 of 2014 and as per the orders of this Court, he paid Rs.10,00,000/-. The respondent had offered to pay the said amount immediately and recording the same, he was directed to pay the same. Accordingly, he paid a sum of Rs.27,00,000/-.

In addition to the amount paid at the time of admission, the total amount came to Rs.37,00,000/-. The writ petition stood allowed with a direction to levy simple interest. Subsequently, on 23.01.2015, another notice was issued calling upon the respondent to pay Rs.40,84,005/-. This was challenged by the respondent by way of other writ petition in W.P.(MD) No.2462 of 2015. The said writ petition was allowed with a direction to the appellant to reconsider the whole issue.

4. According to the learned Additional Government Pleader, the calculation that was given originally was wrong and therefore, the payment that had been made had been adjusted towards interest first, which left out the arrears and therefore, a fresh demand had been made on the respondent. This was challenged before this Court under the impugned order.

5. The learned Single Judge found that where there is no provision enabling the Government to adjust the amounts towards interest first and thereafter, towards the principal or tax arrears. The Court held the amounts paid should have been treated only as payment towards the principal amount or tax arrears.

6. On the last occasion, when the matter was listed, we called upon the learned Additional Government Pleader to produce any statutory provision enabling the Government to adjust the amount towards interest first and principal or tax arrears later. The learned Additional Government Pleader was unable to produce the same as the Tamil Nadu General Sales Tax Act, 1959 does not have such a provision.

7. He would submit that there was an error in calculation and therefore, the Government levied interest on the respondent. It is on record that whatever amount that had been demanded by the appellant had been paid by the respondent immediately. This included the interest as well as the penalty, which the respondent was liable to pay till that date. Error of calculation will not enure in favour of the Government. We feel that it should have gone in favour of the benefit of the respondent. The only issue being whether the amounts paid should be calculated against the interest first and principal or tax arrears later having been answered against the appellant, no further issue remains for adjudication in this writ appeal.

8. Accordingly, the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[S.M.S., J.] **[V.L.N., J.]**

11.10.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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and
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