IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **15.11.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.14119 of 2022
and
W.M.P.No.13347 of 2022

M/s. Abirami Agencies,
Represented by its Managing Partner
Mr.R.Ravi,
No.34, First Main Road,
New Colony, Chrompet,
Chennai – 600 044 ... Petitioner

Vs.

The Assistant Commissioner (ST),
Pallavaram Assessment Circle,
No.345, 3rd Floor, Integrated Commercial Taxes
and Registration Department Building
(South Tower), Nandhanam, Guindy Taluk,
Chennai – 600 035
... Respondent

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, pleased to issue a Writ of Certiorari to call for the records on the file of respondent in the impugned order of assessment in TNGST/0882079/2003-04 dated 21.04.2022 and quash the same as illegal.

For Petitioner : M/s. Lakshmi Sriram

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

ORDER

In this Writ Petition, the Petitioner has challenged the Order dated **21.04.2022** (hereinafter referred to as the 'Impugned Order') passed under Section 55(1)(3) read with Section 55(1) of the Tamil Nadu General Sales Tax Act, 1959, (for brevity, TNGST Act, 1959) read with Section 84 of the Tamil Nadu Value Added Tax Act, 2006 (for brevity, TNVAT Act, 2006).

2. The Petitioner seeks to assail the Impugned Order dated **21.04.2022** rectifying an earlier Assessment Order dated **01.09.2021**, which allowed a refund of **Rs.4,12,492/-** to Petitioner for the **Assessment Year 2003-2004**.

3. The Petitioner, a dealer in Superior Kerosene Oil (SKO), was subject to sales tax at 25% under the TNGST Act, 1959. Additionally, 1%, a resale tax on second sales turnover was also levied apart from surcharge. Disputing the levy of the surcharge and the resale tax, the Petitioner along with various other dealers in Tamil Nadu challenged the same and pursued the remedy up to the Hon'ble Supreme Court.

4. The Hon'ble Supreme Court vide Judgement dated **01.09.2014** in SLP (C) Nos.34076 to 34078 of 2013 ruled against the dealers. The Petitioner thus

voluntarily paid the surcharge and resale tax on **20.03.2015** pursuant to the direction of the Hon'ble Supreme Court in SLP(C) Nos.34076 to 34078 of 2013 vide Order dated **01.09.2014**.

5. The facts on record reveal that three provisional Assessment Orders were passed before finalization of assessments. The aforesaid Assessment Orders were challenged by the Petitioner before various forums including this Court in W.P.No.1412 of 2006, R.P.No.32 of 2004 and W.P.No.15183 of 2004. Details of the three provisional Assessment Orders and subject matter of challenge in the aforesaid Writ Petitions are as under:-

S. No.	**Date**	**Provisional Assessment Order and Period**	**Writ Petitions and Revision Petitions filed against the POs**
1.	30.03.2004	Provisional Assessment Order for the period April 2003-Sept 2003	W.P.No.1412/2004 (Ordered on 03.03.24)
2.	23.07.2004	Provisional Assessment Order for the period Sep 2003-Jan 2004	R.P.No.32/2004
3.	30.03.2004	Provisional Order for the Assessment Year 2003-2004	W..No.15783/2004 (Disposed on 06.08.2021)

6. This Court vide Order dated **03.03.2010** in W.P.No.1412 of 2006 set aside the provisional Assessment Order dated **03.03.2004**. This Court vide

Order dated **06.08.2021** disposed of W.P.No.15183 of 2004 and directed the respondent to finalise the assessment for the **Assessment Year 2003-2004** by issuing a fresh pre-assessment notice to the Petitioner. It led to the issuance of the pre-assessment notice dated 26.08.2021 and the passing of the assessment order dated 01.09.2021, wherein a refund order in Form-C was issued to the Petitioner after adjusting the excess amount available with Department towards the tax due, which is the subject matter of the Impugned Order dated **21.04.2022**.

7. The Respondent vide Impugned Order dated **21.04.2022** sought to rectify an alleged error apparent on the face of the records in the **Assessment Order** dated **01.09.2021** by invoking Section 84 of the TNVAT Act, 2006, read with Section 55 of the TNGST Act, 1959. The Impugned Order dated **21.04.2022** preceded a **Notice** dated **25.03.2022** to revise the refund granted to the Petitioner earlier vide **Assessment Order** dated **01.09.2021**.

8. The Petitioner contends that the **Assessment Order** dated **01.09.2021** was valid and that the rectification proceedings initiated under Section 84 of the TNVAT Act, 2006, read with Section 55 of the TNGST Act, 1959 was without jurisdiction. The specific case of the Petitioner is that the question of

imposing the interest on the Petitioner under Section 24(3) of the TNVAT Act, 2006 cannot be countenanced as there was no delay in payment of tax after the Notice of Assessment/Notice of demand was issued after the Hon'ble Supreme Court passed its order dated 01.09.2014.

9. The Petitioner asserts that the correct tax liability of the Petitioner was determined for the first time only on **01.09.2021**, resulting in a refund of **Rs.4,12,492/-**. Therefore, the learned counsel for the Petitioner argues that the interest under Section 24(3) of the TNGST Act, 1959 cannot be imposed as the tax was paid promptly on **20.03.2015** by the Petitioner after the liability was finalized by the Hon'ble Supreme Court vide Order dated 01.09.2014 in SLP(C) Nos.34076 to 3407 of 2013. It is also contended by the Petitioner that under Rule 16 of the TNGST Rules, 1959, refunds are to be issued via Form-3 after the Final Assessment. Hence, there is no scope to levy interest.

10. The learned Additional Government Pleader for the Respondent submitted that interest was payable as the Petitioner failed to pay the tax in time. Referring to Sections 13(1) and 13(2) of the TNGST Act, 1959, it is submitted that tax would be due even without any Notice of Demand upon submission of the Monthly Return. Therefore, it is submitted that interest gets

triggered automatically under Section 24(3) of TNGST Act, 1959 in case of delayed payment of tax.

11. The learned Additional Government Pleader for the Respondent relies on the decision of the Hon'ble Supreme Court in **E.I.D Parry (India) Ltd.** Vs. **Assistant Commissioner of Commercial Taxes, Chennai [(2005) 4 SCC 779],** which clarified that interest liability is automatic as a consequence of delayed payment of tax.

12. The learned Additional Government Pleader for the Respondent emphasized that under Section 13(2) of the TNGST Act, 1959, tax becomes due upon receipt of the return or on the last prescribed date, whichever is later. It is further submitted that under Section 24(1) of the TNGST Act, 1959, in the event of default in payment of tax within the prescribed time, the amount becomes immediately due along with interest. The principle laid down in **E.I.D Parry (India) Ltd.** (cited supra) underscores that interest liability arises automatically when the tax due remains unpaid beyond the due date specified in the return.

13. I have considered the arguments advanced by the learned counsel for the Petitioner and the learned Additional Government Pleader for the Respondent.

14. The Petitioner had filed its tax returns as is contemplated under Section 13(2) of TNGST Act, 1959. There is no dispute that the Petitioner was also liable to pay not only tax but also resale tax and surcharge on such turnover declared in the return provisionally.

15. The Petitioner, however, failed to pay resale tax and surcharge and challenged the same before the Courts. The Hon'ble Supreme Court vide **Order** dated **01.09.2014** in **SLP (c) Nos.34076 to 34078 of 2013,** dismissed the Special Leave Petition holding it against the Petitioner and other dealers. The Petitioner thus paid the resale tax and surcharge belatedly on **20.03.2015**. Thus, the Petition is liable to pay interest on delayed payment of tax viz., resale tax and surcharge under Section 24(3) of the TNGST Act, 1959. On such belated payment of resale tax and surcharge tax on the sale of Superior Kerosene Oil pursuant to the Order dated **01.09.2014** in **SLP (c) Nos.34076 to 34078 of 2013** of the Hon'ble Supreme Court, the Petition is liable to pay interest.

16. Under Section 13(2) of the TNGST Act, 1989, a dealer may, at his option, pay tax in advance during the respective Year on the basis of his actual turnover for each month or for such other periods as may be prescribed.

17. For this purpose, the dealer is required to furnish returns showing his actual turnover for each month or other periods as may be prescribed and to pay tax on the basis of such returns. The tax under Section 13(2) of the TNGST Act, 1989 is due without any Notice of Demand to the dealer on the date of receipt of return or on the last due date as prescribed, whichever is later. Section 13(2) of the TNGST Act, 1959 reads as follows:-

> ***Section 13. Time of Supply of services:***
> *(1) .....*
> *(2) In lieu of the tax provisionally determined under sub-section (1), a dealer may, at his option, pay tax in advance during the year on the basis of his actual turnover for each month or for such other periods as may be prescribed. For this purpose, he may be required to furnish returns showing his actual turnover for each month or other periods as may be prescribed and to pay tax on the basis of such returns. The tax under this sub-section shall become due without any notice of demand to the dealer on the date of receipt of return or on the last due date as prescribed, whichever is later.*
> *(3) .....*
> *(4) .....*
> *(5) .....*
> *(6) .....*

18. The Resale Tax and Surcharge that was payable by the Petitioner was to be based on the returns that was filed by the Petitioner. It ought to have been paid in accordance with Section 13(2) read with Section 24(1) of TNGST Act, 1959.

19. If the return shows the actual turnover and tax is not paid as per the return, then interest would be payable under Section 24(3) of the TNGST Act, 1959 as that would be a case where amount has remained unpaid after the date specified for its payment.

20. The Hon'ble Supreme Court in **E.I.D Parry (India) Ltd.** Vs. **Assistant Commissioner of Commercial Taxes, Chennai [(2005) 4 SCC 779],** has held that the principle to be kept in mind is, that, the levy of interest emanates as a statutory consequence towards failure to pay tax.

21. It further held that if the return shows the actual turnover and tax is not paid as per the return, then interest would be payable under Section 24(3) of the TNGST Act, 1959 as that would be a case where amount has remained unpaid after the date specified for its payment. The Hon'ble Supreme Court held that if the return shows the actual turnover and tax is not paid as per the return,

then interest would be payable under Section 24(3), as that would be a case where the amount has remained unpaid after the date specified for its payment. This is the principle to be kept in mind when the levy of interest emanates as a statutory consequence, and such liability is a direct result of non-payment of tax. Relevant paragraphs from the said decision is extracted as under:-

> "Mr.Iyer made an attempt to distinguish the Judgments on the ground that the provisions under consideration, in J.K.Synthetics Ltd's case, are not in parimateria with the provisions of the Tamil Nadu General Sales Tax Act. He submitted that the words "actual turnover" had not been used in the Rajasthan Act. He submitted that under the Tamil Nadu General Sales Tax Act the return has to be as per the actual turnover.
>
> In our view, the words "actual turnover" can have no different meaning from the word "turnover". The word "turnover" has been defined under Section 2(r) to mean the aggregate amount for which the goods are bought and sold. Under Section 13(2) the monthly return has to be indicate the actual turnover and tax is then payable as per the return. **If the return shows the actual turnover and tax is not paid as per the return, then interest would be payable under Section 24(3) as that would be a case where amount has remained unpaid after the date specified for its payment**. However, if the monthly return does not indicate the actual turnover then it was for the Assessing Authority to make a demand on the footing that the return was incomplete or incorrect. In the absence of any such demand interest would not become payable under Section 24(3) as there is no provision for charging of interest prior to the date of demand. In this respect the principles laid down in J.K.Synthetics Ltd's case fully apply even though the provisions of the Tamil Nadu General Sales Tax Act and the Rajasthan Act may be identical. **The Principle to be kept in mind is, that,**

> **when the levy of interest emanates as a statutory consequence and such liability is a direct consequence of non-payment of tax,** be it under Section 215 of the Income Tax Act or under Section 7(2) / 7(2A) read with Section 11B(a) of the Rajasthan Sales Tax Act, 1954 (as discussed in the decision of this Court in the case of J.K.synthetics Ltd's case (supra) or under Sections 13(2) /24(3) read with Rule 18(3) under the Tamil Nadu General Sales Tax Act, 1959, ***then such a levy is different from the levy of interest which is dependent on the discretion of the Assessing Officer. The default arising on non-payment of tax on an admitted liability in the case of self-assessment falls under Section 24(3) read with Rule 18(3) which attracts automatic levy of interest whereas the default in filing incomplete and incorrect return falls under Rule 18(4) which attracts best judgment assessment in which the levy of interest is based on the adjudication by the Assessing Officer. Therefore, Rule 18(3) and Rule 18(4) operate in different spheres."***

22. Thus, it is clear from a reading of decision of the **Hon'ble Supreme Court in E.I.D.Parry's (**cited supra), tax is due under Section 13(2) of the TNGST Act, 1959 and the monthly return has to indicate the actual turnover and tax is then payable as per the return.

23. Section 24(3) of the TNGST Act, 1959 reads as under:-

> "**24. Payment and recovery of tax**:
> (1).....
> (2).....
> (3) If the tax assessed under this Act or any instalment thereof is not paid by any dealer or person within the time specified therefor in the notice of assessment or in the order permitting payment in instalments, the

dealer or person shall pay by way of penalty, in addition to the amount due-

a sum equal to a sum calculated at the rate of two percent of such amount for each month or part thereof after the date specified for its payment.

Provided that if the tax assessed under this Act or any instalment thereof is less than one hundred rupees, no penalty shall be levied for a period of one month after the expiry of the time specified in the notice of assessment or the order aforesaid:

Provided further that where a dealer or person has preferred an appeal or revision against any order of assessment under this Act, the assessing authority may, subject to such conditions as it may think fit to impose in the case, pass an order that no penalty shall be payable under this sub-section in respect of the amount in dispute in the appeal or revision, as long as such appeal or revision remains undisposed of."

24. After amendment, Section 24(3) of the TNGST Act, 1959 reads as under:-

"**24**. **Payment and recovery of tax**:

(1).....

(2).....

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

Provided that 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 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 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 the subject matter of the appeal or revision."

25. Therefore, the **Assessment Order** dated **01.09.2021** ordering a refund of a sum of **Rs.4,12,492/-** was to be corrected and was corrected. Thus, the aforesaid **Assessment Order** dated **01.09.2021** was correctly rectified by invoking Section 84 of the TNVAT Act, 2006, read with Section 55 of the TNGST Act, 1959. The Impugned Order dated **21.04.2022** rectifying the Assessment Order dated **01.09.2021** granting a refund to the Petitioner cannot be found fault with.

26. Therefore, there is no merit in the Writ Petition challenging the Impugned Order dated **21.04.2022** and thus the Writ Petition is liable to be dismissed. Accordingly, this Writ Petition is dismissed. No costs. Connected miscellaneous petition is closed.

15.11.2024

Index : Yes
Neutral Citation : Yes
Speaking order : Yes

Sma/JEN

W.P.No.14119 of 2022

C.SARAVANAN, J.

Sma

To

The Assistant Commissioner (ST),
Pallavaram Assessment Circle,
No.345, 3rd Floor, Integrated Commercial Taxes
and Registration Department Building
(South Tower), Nandhanam, Guindy Taluk,
Chennai – 600 035

W.P.No.14119 of 2022

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