IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21-04-2025

CORAM

THE HONOURABLE MR JUSTICE KRISHNAN RAMASAMY

WP No. 36088 of 2023
AND
WMP NO. 36049 OF 2023,WMP NO. 36050 OF 2023

M/s.Meenakshi Sundararajan Engineering College,
Rep. by its Authorised Representative
Mr. Sreekanth Narasimhan,
No. 363, Arcot Road, Kodambakkam,
Chennai 600 024.

Petitioner(s)

Vs

1.The Secretary,
Department of Municipal Administration and
Water supply, secretariat, Fort St. George,
Chennai 09.

2.The Commissioner.
Chennai Municipal Corporation,
Ripon Building, Chennai 600 003.

3.The Assistant Revenue Officer,
Zone office - 10, Revenue Department New
No.117, Old No.64,
NSK Salai Kodambakkam, Chennai 600 024.

Respondent(s)

PRAYER:-Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the records, pertaining to the Impugned Assessment order, dated 19.09.2023, in ZOX. RDC. No. R1/Spl/2022, and Arrear demand and Demand Notice dated 04.10.2023 bearing No. Z.O 10 RDC No. R1/SPL/2023-24 pertaining to Bill No. 10/134/13941/000 for the period upto II/23-24, on the file of the 3rd respondent, insofar as it imposes 60% of surcharge, in respect of the Petitioner College, and quash the same as illegal, and consequently direct the Respondents to set off the surcharge of Rs. 23,81,790/- (Rupees Twenty Three Lakhs Eighty One Thousand Seven Hundred and Ninety) paid under protest for the period upto II/23-24, against any present or future demand of the Corporation.

For Petitioner(s): Mr.Naveen
for Mr.Hari Shankar Mani

For Respondent(s): Dr.T.Seenivasan,
Special Government Pleader for R1
Mr.Prithvi Chopda,
Standing Counsel for R2 & R3

ORDER

This writ petition has been filed by the petitioner challenging impugned order passed by the 3rd respondent demanding surcharge on the petitioner/Educational Institution.

2.Learned counsel for the petitioner would submit that the subject matter of the present case has already been decided by this Court vide order dated 20.06.2022 in W.P.Nos.34104 of 2019 etc., batch, whereby this Court quashed the resolution passed by the Corporation of Chennai imposing 60% of surcharge and held that no additional taxes can be levied against the Educational Institution.

3.Learned Special Government Pleader appearing for the 1st respondent and the learned Standing Counsel appearing for the respondents 2 and 3 acceded the submissions made by the learned counsel for the petitioner.

4.The relevant portion of the order of this Court dated 20.06.2022 in W.P.Nos.34104 of 2019 etc batch has been reproduced hereunder:-

> "......17. The foundation upon which any levy rests is the authority under which it has been imposed. The proposition that the levy of interest has to be supported by a substantive position in the statute, has been settled by the Constitution Bench of the Hon'ble Supreme Court in the case of J.K.Synthetics Ltd. Vs. Commercial Taxes Officer [1994 (94) STC 422 (SC)]. The ratio

decidendi has been reiterated in India Carbon Ltd. Vs. State of Assam [106 STC 460].

18. In that case, the issue related to the charging of interest on delayed payment of Central Sales Tax in terms of the Sales Tax Act, 1956. However, the Bench repelled the levy accepting the contention that while Section 9(2-A) of the Central Sales Tax Act, 1956 enabled the framing of assessment, reassessment, collection and enforcement of demand of Central sales tax as well as penalty, a statutory provision enabling the levy of interest on delayed payments was conspicuous by its absence.

19. There has to be, the Bench reiterated, a substantive provision that would oblige the assessee to comply with the mandate therein. In the absence of such a provision in the Central Sales Tax Act obliging the assessee to remit interest on delayed payment of interest, such a levy could not be countenanced. The relevant paragraphs are extracted below:

> "…. 12. Section 9(2-A) makes applicable to the assessment, reassessment, collection and enforcement of Central sales tax the provisions relating to offences and penalties contained in the State Acts as if the Central sales tax was a State sales tax. But Section 9(2-A) makes no

reference to interest.

13. There is no substantive provision in the Central Act requiring the payment of interest on Central sales tax. There is, therefore, no substantive provision in the Central Act which obliges the assessee to pay interest on delayed payments of Central sales tax.

14. Now, the words "charging or payment or interest" in Section 9(2) occur in what may be called the letter part thereof. Section 9(2) authorises the sales tax authorities of a State to assess, reassess, collect and enforce payment of the Central sales tax payable by a dealer as if it was payable under the State Act; this is the first part of Section 9(2). By the second part thereof these authorities are empowered to exercise the powers they have under the State Act and the provisions of the State Act, including provisions relating to charging and payment of interest, apply accordingly. Having regard to what has been said in the case of Khemka & Co., it must be held that the substantive law that the States' sales tax authorities must apply is the Central Act. In such application, for procedural purposes alone, the provisions of the State Act are available. The provision relating to interest in the latter part of Section 9(2) can be employed by the States' sales tax authorities only if the Central Act makes a substantive provision for the levy and charge of interest on Central

sales tax and only to that extent. There being no substantive provision in the Central Act requiring the payment of interest on Central sales tax the States' sales tax authorities cannot, for the purpose of collecting and enforcing payment of Central sales tax, charge interest thereon." As the levy of surcharge in the present is, admittedly without any statutory backing or authority, I quash the same.

20. My conclusion is also supported by the methodology in computation. The argument advanced by the respondents is that the ceiling of 25% referred to in Section 99(2) proviso must be restricted to taxes alone, as 'surcharge' is a super addition to tax, over and above the 25%. This argument is only stated to be rejected.

21. Section 99 reads thus:

"99. Description and class of property tax.-

(1) If the council by a resolution determines that a property tax shall be levied, such tax shall be levied on all buildings and lands within the city save those exempted under this Act or any other law. The property tax may comprise -

(a) a tax for general purposes;

(b) a drainage tax for the purpose of defraying the expenses connected with the drainage system of the city;

(c) a lighting tax for the purpose of defraying the expenses connected with the lighting of the city; Provided that where the drainage tax is levied, the council shall declare what proportion of the tax is levied in respect of drainage works and the proportion so declared shall also be specified in the notice published under sub-section (2) of section 98-A.

(2) Save as otherwise provided in this Act, these taxes shall be levied at such percentages of the annual value of buildings and lands as may be fixed by the council : Provided that the aggregate of the percentage so fixed shall not, in the case of any land or building, be less than 15.5 percent, or greater than 25 percent of its annual value.

(3) For the purpose of assessing the property tax, the annual value of any building or land shall be determined by the commissioner: Provided that the annual value of any building or land the tax for which is payable by the commissioner shall be determined by the Mayor."

22.The provision only provides for a levy of tax. In fact, it does not even provide for the levy of any other duties or cess. Seen in that light, the imposition of a library cess is also sans authority. However, as that is not the subject matter of challenge before me, I leave that at that.

23. As rightly pointed out, the sum total of 'general tax + educational tax + library cess' amounts to 24.8% of the annual value of buildings which is within the permissible limit whereas the addition of surcharge would carry the amount over and above the permissible limit.

24. For the aforesaid reasons, the impugned resolution, to the extent to which it levies surcharge, is found contrary to the provisions of the respective enactments and such levies are quashed. These Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

5.The ratio of the order referred to above is squarely applicable to the facts of the present case. Hence, the Writ Petition is disposed of on the same line. No costs. Consequently, connected miscellaneous petitions are closed.

21-04-2025

Index:Yes/No
Speaking/Non-speaking order
Neutral Citation:Yes/No

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