**(2010) 12 MAD CK 0132**

**In the Madras High Court**

**Case No :** Writ Petition No. 24684 of 2010 and M.P. No. 1 of 2010

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| Batliboi and Co. Ltd. (Now known as Batliboi Ltd.) | APPELLANT |
| Vs | |
| Joint Commissioner (Ct), Chennai (North) Division and Another | RESPONDENT |

**Date of Decision :** 02-12-2010

**Acts Referred:**
Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2008 — Section 2, 6(3), 7

**Citation :** (2011) 38 VST 465

**Hon'ble Judges :** Chitra Venkataraman, J

**Bench :** Single Bench

**Advocate :** T. Pramodkumar Chopda, for the Appellant; R. Mahadevan, Additional Government Pleader (Taxes), for the Respondent

## Judgement

Chitra Venkataraman, J.—The Petitioner challenges the order dated August 5, 2010 made under the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2008.

2. The contention of the Petitioner herein is that as per Section 7 of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2008, the dealer needs to pay one-third of arrears of tax pending collection on the date of application along with interest calculated at six per cent per annum on the arrears of tax and on such payment of tax, the balance of tax and interest and the entire penalty shall be waived.

3. According to the Petitioner, the assessment made for the year 1991-92 went on appeal before the Sales Tax Appellate Tribunal ; thereupon, the assessment stood modified by reason of the relief granted by the Appellate Tribunal. Consequent on the relief given, an order was passed on March 30, 2009, by the Assistant Commissioner, pointing out to the balance of tax payable at Rs. 4,42,447 and penalty of Rs. 2,36,661. Taking advantage of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2008, after adjusting the amount that he had already paid, the Petitioner calculated 1/3rd liability on the arrears of tax at Rs. 1,47,482 in terms of Section 7 of the Tamil Nadu Sales Tax (Settlement of

Arrears) Act, 2008 and the interest at six per cent at Rs. 85,908. Thus, the tax and interest payable as per the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2008 came to a sum of Rs. 2,33,390. Accordingly, the Petitioner had also remitted the said sum. However, by proceedings dated August 5, 2010, the Joint Commissioner passed the impugned order, wherein he stated that the Petitioner has to pay a sum of Rs. 2,87,962 towards tax and interest as detailed in the said order. Hence, the Petitioner was directed to make the payment. However, as the Petitioner had paid a sum of Rs. 2,34,565 as per Section 7(b) of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2008, the application filed by the Petitioner for samadhan was rejected by the Joint Commissioner in the said impugned order. The Petitioner made a representation on August 30, 2010, requesting the first Respondent to accept the application filed u/s 6(3) of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2008. However, by proceedings dated September 17, 2010, the first Respondent stated that since final order was passed on the application to settle the arrears of tax under the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2008 and as no reply was filed by the Petitioner to the rejection notice dated June 14, 2010, the objections now filed by the Petitioner did not merit consideration. Aggrieved by the order passed by the second Respondent dated August 5, 2010, the present writ petition has been filed.

4 Heard learned Counsel for the Petitioner as well as learned Additional Government Pleader (Taxes), for the Respondents.

5. Section 2(b) of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2008, defines arrears of tax, penalty or interest, as follows:

(i) tax including additional sales tax, surcharge, additional surcharge and Central sales tax, payable by an applicant upon assessment under the relevant Act; or

(ii) penalty payable by an applicant under the relevant Act; or

(iii) interest payable by an applicant under the relevant Act, as the case may be, for which assessment has been made prior to the 1st day of April, 2002 under the relevant Act, and pending collection on the date of filing of application under this Act.

6. As regards the determination of the amount payable with the rate applicable thereon, Section 7(b) of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2008 is relevant for the purpose of this case, which reads as follows:

Where it relates to arrears of tax which was in excess of the tax admitted as per the returns filed for the year with the corresponding arrears of penalty and interest, the applicant shall pay one third of such arrears of tax pending collection on the date of application along with interest at six per cent per annum on the arrears of tax and on such payment of tax, the balance of tax and interest and the entire penalty shall be waived.

7. Going by the said provisions, the intending Assessee availing of the Samadhan

 

Scheme has to pay 1/3rd of the arrears of tax with interest at six per cent on the 1/3rd arrears of tax, that on the payment of the same, the Petitioner is entitled to have the balance of arrears of tax, interest and penalty, which includes the interest payable on the belated payment, waived. If Section 7(b) of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2008 intended interest on the arrears also to be included in the one-third payment, it would have said so. However, when the contemplation is as regards the payment of one-third of the balance of tax and payment of interest at six per cent calculated thereon, I have no hesitation in accepting the plea of the Petitioner. The impression of the first Respondent, however laudable it may be from the revenue point of view, the same is not reflected in the Section.

8. It is clear from the order of the first Respondent as well as by the admission by the Petitioner that the Petitioner remitted the admitted arrears of tax in part belatedly on September 18, 1999, November 7, 1999, April 30, 2002, July 31, 2003 and March 31, 2009, respectively, consequent to which, penal interest is payable by the Petitioner. The order dated March 30, 2009 gave the balance of tax of Rs. 4,42,447 and penalty at Rs. 2,36,661 standing as arrears as on the date when the application was filed for samadhan. Applying Section 7(b) of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2008, all that the Petitioner has to pay is 1/3rd of the arrears of tax along with interest at six per cent per annum on the said amount of 1/3rd of the arrears of tax. On payment of the same, the balance of arrears of tax, interest and penalty would stand waived as per the provisions of the Act. Rightly, the Petitioner has worked his calculation in the application in form I dated March 31, 2009.

9. Consequently, going by Section 7(b) of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2008, I have no hesitation in setting aside the order dated August 5, 2010 demanding further payment by way of interest on the belated payment of tax, which, evidently, is contrary to Section 7(b) of the Act.

10. In the circumstances, I have no hesitation in quashing the order of the second Respondent, thereby allowing the writ petition. The second Respondent is hereby directed to accept the application submitted in form I and issue the certificate of settlement as per the provisions of the Tamil Nadu Sales Tax (Settlement of Arrears) Act (Act 60 of 2008). No costs. Consequently, connected miscellaneous petition is closed.