

(2015) 11 MAD CK 0055

In the Madras High Court

Case No : Writ Appeal (MD) Nos. 498 to 507 of 2015 and M.P. (MD) No. 1 of 2015 in 498 to 507 of 2015

Cheran Cements Limited

APPELLANT

Vs

The Joint Commissioner (CT), Trichy Division and Others

RESPONDENT

Date of Decision : 30-11-2015

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 13(2), 16D, 16-D, 24(3)
Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2008 — Section 7, 7(b)
Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2010 — Section 1, 12, 2, 3, 4

Citation : (2016) 1 MLJ 1 : (2016) WritLR 41

Hon'ble Judges : V. Ramasubramanian and N. Kirubakaran, JJ.

Bench : Division Bench

Advocate : R. Hema Latha, for the Appellant; K. Chellapandian, Addl. Advocate General assisted by R. Karthikeyan, Addl. Govt. Pleader, for the Respondent

Judgement

V. Ramasubramanian, J.—These writ appeals are by the assessee under the Tamil Nadu General Sales Tax Act, 1959 (in short "TNGST Act") and the Central Sales Tax Act, 1956 (in short "CST Act"), challenging the dismissal of their writ petitions questioning the rejection of their applications for settlement under the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011, (in short "T.N. Act, 29/2011").

2. We have heard Mrs. R. Hema Latha, learned counsel for the appellant and Mr. K. Chellapandian, learned Additional Advocate General, assisted by Mr. R. Karthikeyan, learned Additional Government Pleader (Taxes), for the respondents.

3. The appellant is engaged in the manufacture of cement and allied products. They are registered as dealers under the TNGST Act and the CST Act.

4. The appellant availed the benefit of a scheme known as "Interest Free Sales Tax Deferral Scheme" for a period of nine years, upto a ceiling of Rs. 420.62 lakhs, granted on the basis of an Eligibility Certificate issued by SIPCOT Limited. The appellant entered into an agreement with the Assistant Commissioner

(Commercial Taxes), as per which the sales tax payable during the period from 01.07.1999 upto 30.06.2008 would stand deferred. The repayment was to commence only from 01.07.2008 and run upto 30.06.2017.

5. Though the period for which the appellant was entitled to defer payment was upto 2008, the appellant exhausted the entire ceiling limit even before October, 2004. As a consequence, the appellant ought to have commenced repayments, but they violated the terms and conditions of the scheme and the agreement.

6. Due to the breach committed by the appellant, the Assistant Commissioner (CT) issued a show cause notice, dated 31.08.2005, proposing to cancel the deferral agreement. After the appellant submitted a reply, an order was passed on 22.09.2005, cancelling the agreement and demanding the payment of the entire tax.

7. Challenging the cancellation, the appellant filed a writ petition in W.P. No. 11095 of 2005 on the file of this Court. But, the appellant could not get any tangible relief in the said writ petition.

8. While things stood thus, the appellant continued to file monthly returns in Form-A1 under the TNGST Act and in Form-I under the CST Act, reporting the total and taxable turnovers for the Assessment Years 1999-2000 to 2006-2007. However, the appellant failed to produce the Books of Accounts and other connected records, despite service of summons on them. This was insofar as the Assessments under TNGST Act were concerned.

9. Insofar as the assessments under the CST Act were concerned, the appellant did not either file Form-F Declarations or filed Form-C Declarations with discrepancies. In some cases, Form-C Declarations were not filed.

10. Therefore, the Assessing Officer passed orders dated 08.06.2001, 24.05.2002, 20.10.2010, 20.10.2010, 20.10.2010 and 11.11.2011 under the CST Act, relating, respectively, to Assessment Years 1999-2000, 2000-2001, 2003-2004, 2004-2005, 2005-2006 and 2006-2007.

11. Likewise, the Assessing Officer passed separate orders dated 20.10.2010, 20.10.2010, 11.11.2010 and 11.11.2010 under the TNGST Act, relating to the Assessment Years 2003-2004, 2004-2005, 2005-2006 and 2006-2007.

12. As against the six assessment orders passed under the CST Act and the four assessment orders passed under the TNGST Act, the appellant filed four petitions before the Special Committee under Section 16-D of the TNGST Act in relation to Assessments under the CST Act for the years 2003-2004, 2004-2005, 2005-2006 and 2006-2007. They also filed four similar applications under Section 16-D of the TNGST Act in relation to the assessments under TNGST Act for the years 2003-2004, 2004-2005, 2005-2006 and 2006-2007.

13. By independent orders, passed on 04.11.2011, the Special Committee allowed the applications under Section 16-D in relation to the Assessments under

the CST Act and remanded the matter back to the Assessing Officer to enable the assessee to file objections and also to produce declaration forms.

14. Likewise, by independent orders, all passed on 04.11.2011, the applications in relation to the assessments under the TNGST Act for the assessment years 2003-2004 and 2004-2005 were allowed and the matter remanded back to the Assessing Officer. But, applications relating to the assessment years 2005-2006 and 2006-2007 were rejected.

15. During the pendency of all the applications before the Special Committee under Section 16-D, the Government of Tamil Nadu Passed an enactment known as "The Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2011" (T.N. Act 29/2011). The intention of the Act was to provide for settlement of arrears of tax, penalty or interest pertaining to sales tax.

16. Therefore, instead of pursuing the matter before the Assessing Officer on the basis of the orders of remand passed by the Special Committee, the appellant chose to file applications in Form-I under Section 5(1) of T.N. Act 29/2011. Along with the applications, the appellant remitted 40% of the admitted and disputed tax together with interest at 7.5%, in terms of Section 7(a) of T.N. Act 29/2011.

17. Pointing out that the appellant ought to have paid 100% of the tax as admitted in their returns, for a consideration of their applications under the Samadhan Scheme, the Joint Commissioner, Commercial Tax, passed six independent orders in relation to CST Act for the assessment years 1999-2000, 2000-2001, 2003-2004, 2004-2005, 2005-2006 and 2006-2007 and four independent orders under the TNGST Act for the assessment years 2003-2004, 2004-2005, 2005-2006 and 2006-2007, rejecting the applications under Section 6(1) of T.N. Act 29/2011. All the 10 orders, six under CST Act and four under TNGST Act, were passed on 16.02.2015.

18. Challenging the rejection of the applications for settlement under T.N. Act 29/2011, in relation to the CST Act, the appellant filed six writ petitions in W.P. (MD) Nos. 4189 to 4194 of 2015. Challenging the four orders relating to the TNGST Act, the appellant filed four writ petitions in W.P.(MD) Nos. 4156 to 4159 of 2015. By a common order, dated 24.03.2015, all the 10 writ petitions were dismissed by a learned Judge of this Court. Therefore, the appellant has come up with these 10 writ appeals.

19. Before we look into the grievance of the appellant, it is necessary to have a look at the Scheme of T.N. Act 29/2011. This Act, as we have pointed out earlier, provides for the settlement of arrears of tax, penalty or interest, pertaining to sales tax. The Act comprises of 15 Sections. Section 1 provides the short title, extent and commencement. Section 2 provides Definitions. Section 3 provides for appointment of a Designated Authority for carrying out the purposes of the Act. Section 4 speaks about the eligibility for settlement. As per this Section, an application for settlement of arrears of tax, penalty or interest, if they relate to the Assessment Years upto 2006-2007, could be made, provided the assessment

has been made prior to 01.08.2011 and also subject to the further condition that an appeal or revision is not pending before any court on the date of filing the application.

20. Section 5 speaks about the method of filing an application for settlement. Section 6 indicates the method of determination of amount payable by an applicant. In fact, Section 6(1) vests with the Designated Authority the power to verify the correctness of the particulars furnished in the application under Section 5 and to make a demand for further amount.

21. Section 7 of the Act indicates the amounts payable by an applicant and the amounts that could be waived. Section 7 deals with four different situations. It can be best understood by extracting the Section 7, which reads as follows:

"7. Rate applicable in determining amount payable.--The amount payable by the applicant and to be waived shall be determined as follows:--

(a) Where it relates to arrears of tax which was assessed on the best of judgment due to non-production of accounts with corresponding arrears of penalty and interest, the applicant shall pay forty per cent of arrears of tax pending collection on the date of application along with interest calculated at seven and a half per cent per annum thereon and on such payment of tax, the balance of tax and interest and the entire penalty shall be waived.

(b) Where it relates to arrears of tax, including any arrears of the accrued due to non-filing of declaration forms 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 forty per cent of such arrears of tax pending collection on the date of application along with interest at seven and a half per cent per annum thereon and on such payment of tax, the balance tax and interest and the entire penalty shall be waived.

(c) Where it relates to arrears of tax, which was admitted as tax due as per returns filed for the year with corresponding arrears of penalty and interest the applicant shall pay the entire arrears of tax pending collection along with interest at seven and a half per cent per annum and on such payment, the balance of interest and the entire penalty shall be waived.

(d) Where it relates to arrears of penalty or interest or both and where there is no corresponding arrears of tax pending collection on the date of application, the applicant shall pay ten per cent of the penalty and twenty-five per cent of interest, the balance of penalty and interest shall be waived."

22. Section 8 speaks about the settlement of arrears and the issue of certificate, Section 9 bars the re-opening of settled cases and Section 12 deals with revocation of the certificate. The other provisions may not be of any relevance for our purpose and hence we are not dealing with the same.

23. As we have stated earlier, Section 7 indicates the amount payable by an

applicant and the amounts that could be waived. The four situations contemplated under Section 7 and the amount payable under each one of those situations for entertaining an application under the Scheme are presented in a Tabular Column, as follows.

24. In the cases on hand, the appellant enjoyed the benefits of an Interest Free Sales Tax Deferral Scheme. Though the scheme was for a period of nine years, commencing from 01.07.1999 to 30.06.2008, with the repayment due to commence from 01.07.2008, the same was subject to a ceiling limit. The appellant crossed the ceiling limit in October, 2004 itself and hence became liable to pay tax.

25. Unfortunately, the appellant, who collected the tax from its customers did not pay the tax, even after they crossed the ceiling limit in October, 2004. In other words, the tax payable even as per the returns filed were not remitted by the appellant. To put it differently, the tax admittedly due even as per the returns filed by the appellant were not paid, despite the same having been collected from the customers.

26. Insofar as the assessment orders for the period from 2003-2004 to 2006-2007 under the TNGST Act are concerned, the appellant failed to produce the Books of Accounts. Therefore, the Assessing Officer passed orders terming them as best of judgment assessments. But, what the Assessing Officer really did was just to add 25% to the total and taxable turnover for the non-production of records. These best of judgment assessment orders were not really a set of orders where some total and taxable turnover that escaped assessment were found out and regulated. Since no books of accounts were produced under TNGST Act, the Assessing officer arbitrarily added 25% to the reported total and taxable turnover and passed four assessment orders, dated 20.10.2010, 20.10.2010, 11.11.2010 and 11.11.2010 under TNGST Act relating to the assessment years 2003-2004, 2004-2005, 2005-2006 and 2006-2007.

27. Insofar as the assessments under the CST Act are concerned, the reasons for passing six different best of judgment assessment orders could be presented in a tabular form, as follows.

28. Interestingly, the appellant did not file appeals against the six orders of assessment under the CST Act and the four orders of assessment under the TNGST Act. The appellant merely filed applications under Section 16-D of the TNGST Act before the Special Committee. In relation to the Assessment Orders under CST Act, the appellant filed only four applications under Section 16D. They also filed four applications before the Special Committee under Section 16-D in relation to the Assessments under TNGST Act. The Special Committee allowed all but two applications and remitted the matter back to the Assessing Officer. It was only at that stage the appellant filed applications in Form-I under the Samadhan Scheme, in terms of T.N. Act 29/2011, claiming that those applications are to be treated in terms of Section 7(a) of T.N. Act 29/2011. But,

the Designated Authority wanted the appellant to pay 100% of the tax admittedly due as per the returns, in terms of Section 7(c) of T.N. Act 29/2011. Therefore, the appellant came to court with a batch of writ petitions.

29. Hence the most fundamental question that arises for consideration is as to whether the case of the appellant would fall under Section 7(a) or 7(c) of T.N. Act 29/2011.

30. The primary contention of Mrs. R. Hema Latha, learned counsel for the appellant is that when admittedly the liability fastened upon the appellant arose out of best of judgment assessment orders, the case would be covered only by Section 7(a) and not Section 7(c) of T.N. Act 29/2011.

31. We have already extracted Section 7 of T.N. Act 29/2011 in entirety. We have also provided in a tabulation, the four different situations covered by Section 7.

32. A careful look at Section 7 would indicate that the four clauses contained therein are not mutually exclusive of each other. The clauses contained in Section 7 are not intended to put a premium on dishonesty. The consequence that will flow if the contention of the learned counsel for the appellant is accepted, can be seen by taking a hypothetical example.

33. Let us take for instance a case where a honest tax payer files a return admitting a particular amount of total and taxable turnover and admitting his liability to pay tax to the extent of Rs. 100/-. If, for some reason he fails to pay the admitted tax and proceedings for recovery are initiated, he will be liable, even according to the learned counsel for the appellant, to pay 100% of the admitted tax, in terms of Section 7(c) of T.N. Act 29/2011, in case he wants to avail the benefit under the Scheme.

34. Let us now take for instance a dishonest tax payer, according to whose returns he is due to pay admitted tax to the extent of Rs. 100/-. If based upon an inspection by the Enforcement Wing or upon the happening of some other event, the Department discovers turnover which escaped assessment, leading to the initiation of proceedings and the passing of best of judgment assessment order, leading to a claim for tax to the extent of Rs. 120/-, he will be entitled to the benefit, according to the learned counsel for the appellant, of Section 7(a). As a consequence, he will only pay 40% of the said amount of Rs. 120/-, namely Rs. 48/-.

35. This result is not what is contemplated by clause (a) and (c) of Section 7 of T.N. Act 29/2011. The Act does not intend to punish the honest and put a premium for a dishonest conduct.

36. Apart from the above, the contention of the learned counsel for the appellant that both clauses (a) and (c) of Section 7 cannot be invoked simultaneously, cannot be accepted for two more reasons. They are:

(i) At least in six out of eight cases, where the appellant filed applications under

Section 16-D of the TNGST Act, the best of judgment orders of assessment have been set aside and the matter remanded back. Unfortunately, the orders passed by the Special Committee do not use the phrase "assessment orders set aside and the matter remanded". The orders of the Special Committee use the phrase "application remanded." But it is only a wrong usage and these orders have the effect of nullifying the assessment orders. Therefore, on the date on which the appellant filed applications in Form-I under the Samadhan Scheme, the best of judgment assessment orders were not in force. As a consequence, the returns filed by the appellant alone were available. Therefore, Section 7(c) alone got attracted, as there was no best of judgment assessment order, enabling the appellant to fall back upon Section 7(a), even if his first contention is accepted.

(ii) The second reason as to why the first contention of the appellant cannot be accepted is that the appellant is a Company which availed the benefit of Interest Free Sales Tax Deferral Scheme. Under the Scheme, they collected the entire amount of tax on the admitted total and taxable turnover and they retained it only by virtue of the Interest Free Sales Tax Deferral Scheme. Therefore, such a person cannot claim the benefit of retention of 60% of what they have already collected from customers under the Scheme.

Hence the first contention of the learned counsel for the appellant is rejected.

37. The next contention of the learned counsel for the appellant is that Section 7(c) has to be read with Section 4. Section 4, which speaks about eligibility for settlement, imposes three conditions they are:

(i) that the arrears of tax should pertain to the assessment orders upto 2006-2007;

(ii) that the assessments relating to these years should have been made prior to 01.08.2011; and

(iii) that no appeal or revision was pending on the date of filing of the application.

38. The contention of the petitioner is that in the case on hand, best of judgment assessment had been made prior to 01.08.2011 and hence Section 7(c) was squarely attracted.

39. But, we do not think that the above contention is correct. As we have indicated in the first part of this judgment dealing with the narratives, the orders of assessment were passed during the period 2001 to 2010. Therefore, it is true that the second condition stipulated under Section 4 was satisfied. But some of these assessment orders were set aside by the Special Committee on applications filed under Section 16-D of the TNGST Act and the matters remanded back for passing fresh assessment orders. No fresh orders of assessment were passed before the cut-off date, namely 01.08.2011. Therefore, the second stipulation contained in Section 4 was not satisfied in some cases.

40. The question whether the pendency of an application under Section 16-D of

the TNGST Act can be taken as equivalent to the pendency of an appeal or revision has not been raised before us. But, let us have a look at what would happen if an application under Section 16-D of TNGST Act is equated to an appeal or revision.

41. If the application under Section 16-D is treated as an appeal or revision, the appellant is not even eligible in terms of Section 4 to apply under the Samadhan Scheme. In case, the application under Section 16-D is not treated as an appeal or revision, even then the order passed thereon on 04.11.2011 by the Special Committee had the effect of setting aside the original orders of assessment passed on best of judgment. Once the best of judgment assessment orders go, what would remain are only be the returns filed by the appellant. If there are no best of judgment assessment orders, due to the quashing of the same by the Special Committee, as on the date of the appellant filing applications under the Samadhan Scheme, their very eligibility to the benefit of the Scheme would be in doubt and in any case, the question of invoking Section 7(a) would not arise at all.

42. The next contention of the learned counsel for the appellant is that the current Samadhan Scheme of the year 2011 was preceded by several Samadhan Schemes. While some of them related to settlement of disputes, the others related to settlement of arrears.

43. For instance, the Samadhan Scheme introduced in the year 2002 was actually a Scheme for settlement of disputes, as can be seen from the title given to the Act, namely, the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002. The focus of Section 7 of the said Act was on any tax in dispute or on payment of penalty in dispute or on any penalty in dispute or on any interest in dispute.

44. But the next Scheme that was introduced under the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2008, focused on the settlement of arrears. Section 7 of the 2008 Act also provided for four different situations as in the present case. But it spoke only about arrears of tax or arrears of penalty or interest or both.

45. The next Scheme was under the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2010 Even here, the focus was on settlement of arrears of tax. Then came the 2011 Act whose scope and ambit we have already discussed.

46. Based upon the various Samadhan Schemes that were introduced right from the year 2002 upto 2011, it was contended by Mrs. R. Hema Latha, learned counsel for the appellant, that if the focus of the Scheme was on the settlement of disputes, the respondents can demand payment of the admitted tax and allow waiver of a part of the disputed tax. If the focus of the Scheme is for the settlement of arrears, the distinction between admitted tax and disputed tax would disappear, as everything would fall under the category of arrears of tax.

47. In support of the above contention, Mrs. R. Hema Latha, learned counsel for

the appellant, also drew our attention to the distinction between Section 7(b) of the 2008 Act and Section 7(b) of the 2011 Act. In Section 7(b) of 2008 Act, cases relating to arrears of tax "which was in excess of the tax admitted as per the returns filed for the year" were covered. But, in Section 7(b) of the 2011 Act, the arrears of tax, including the arrears of tax accrued due to non filing of declaration Forms, which was in excess of the tax admitted as per the returns, were covered. Hence it is contended that the difference between the settlement of disputes and settlement of arrears has to be kept in mind, before interpreting Section 7 of the Act.

48. We have carefully considered above submission. We have no difficulty in accepting that the settlement of dispute could be different from the settlement of arrears. In cases of settlement of disputes, the quantum of demand and the quantum of admitted amount may vary. Therefore, the parties may strike a deal for resolving the dispute and it is this deal that becomes known as settlement. But, in cases of settlement of arrears, the term "settlement" connotes payment or payment terms.

49. But, the distinction stops there. Every Samadhan Scheme has to be understood and interpreted in the light of the provisions contained in the Scheme itself. It is not possible to invoke an external aid for the construction of a provision in an Act containing a Samadhan Scheme.

50. In the Samadhan Scheme, as propounded by the Tamil Nadu Act 29/2011, there is no scope for interpreting clauses (a) and (c) of Section 7, as mutually exclusive of each other. We have already given an illustration as to how such mutual exclusivity would put a premium on the dishonest.

51. In any case, the expression "arrears" need not necessarily be confined to "admitted arrears". It could also connote "disputed arrears" or "arrears claimed as due". Therefore, the interpretation sought to be given on the basis of various Samadhan Schemes, cannot also be accepted.

52. The last contention of the learned counsel for the appellant is that in any case, the interest of 7.5% imposed under Section 7(a) or Section 7(c) of the Act is payable only from the date of assessment and not from the date of filing of returns. However, by the orders impugned in the writ petitions, rejecting the applications of the appellant under the Samadhan Scheme, the Designated Authority has held that the interest ought to have been calculated from the date of filing of the returns. This, according to the learned counsel for the appellant, is contrary to the decision of a Division Bench of this Court in *E.D.I. Parry (India) Limited vs. Assistant Commissioner (CT) and others* - 126 STC 449 Mad.

53. But, we do not know how reliance is placed upon the decision in *EID Parry (India) Limited*. That was a case where the assessee filed supplementary returns. The supplementary returns covered freight charges and transport subsidy. Along with the supplementary returns, the assessee remitted an additional tax, but under protest. Thereafter, assessments came to be made. Therefore, the

question arose as to whether the filing of supplementary returns, subsequent to the filing of a return under Section 13(2) with a demur that the amount is being paid under protest, can be regarded as a return under Section 13(2) for the purpose of levy of interest under Section 24(3).

54. While answering this question in favour of the assessee, the Division Bench of this Court pointed out that if the stand taken by the assessee about the need to file a supplementary return was bona fide and not as a mere ruse to avoid payment of interest, then the department cannot claim interest under Section 24(3). Therefore, the above decision has no application to the cases on hand.

55. In the cases on hand, the appellant had availed the benefit of deferred payment of sales tax under a particular scheme. They committed a breach of the agreement executed with the department. Therefore, as per the agreement and the interest free deferral scheme, they were liable to pay interest from the date of filing of monthly returns. The emphasis on bona fide conduct of an assessee made by the Division Bench in EID Parry is completely absent in this case. This case is governed not merely by the statutory provisions relating to payment of interest, but also by the agreement executed by the appellant with reference to the interest free deferral scheme. A person who had collected tax from the customers and allowed to retain it under a deferred payment scheme, cannot claim that he would pay 40% of what was collected by him together with interest calculated from the date of assessment. This is not the purport of the Samadhan Scheme.

56. Therefore, all the writ appeals are completely devoid of merits. Hence they are dismissed. No order as to costs. Connected miscellaneous petitioners are also dismissed.