(2007) 12 MAD CK 0244

In the Madras High Court

Case No : Writ Petition No. 12229 of 2004 and M.P. No. 14299 of 2004

Kone Elevator India Pvt. Ltd. APPELLANT

Vs

The Commercial Tax Officer RESPONDENT

Date of Decision : 03-12-2007

Acts Referred:

Central Sales Tax Act, 1956 — Section 9(2A)
Tamil Nadu Additional Sales Tax Act, 1970 — Section 2(1)
Tamil Nadu Additional Sales Tax Rules, 1970 — Rule 9
Tamil Nadu General Sales Tax Act, 1959 — Section 12(3), 16(2), 2, 24(3), 25
Tamil Nadu General Sales Tax Rules, 1959 — Rule 6A, 6B
Tamil Nadu Sales Tax (Surcharge) Act, 1971 — Section 3(2), 3A(2)

Citation : (2008) 18 VST 394

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : Chandran Karuppiah, for the Appellant; R. Mahadevan, Addl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J.—The petitioner has challenged the proceedings of the respondent dated 21.04.2004, in the light of the law laid down by

the Supreme Court in India Carbon Ltd. etc. Vs. State of Assam, and for further orders.

2. Brief facts leading to the Writ Petition are as follows:

The petitioner is a registered dealer dealing with Lifts and Lifts components and assessee on the files of the respondent. During assessment year

2002-03, the petitioner opted for payment of tax on Works contract at compounded rates u/s 7(c) of the Tamil Nadu General Sales Tax Act,

1959 (in short ""the TNGST Act"") and remitted the same, vide monthly returns. However, in respect of petitioner''s liability to pay Additional Sales

Tax, only at the end of the year they found that their taxable turnover was exigible to the levy of Additional Sales Tax and immediately remitted the

same on 17.04.2003, while filing monthly returns for the above said assessment year.

3. The petitioner has submitted that they remitted the additional sales tax vide cheque dated 17.04.2003, besides remitting sales tax u/s 7-C of the

TNGST Act. However, the respondent has issued the impugned notice dated 21.04.2004, levying penalty u/s 24(3) of the TNGST Act.

According to the petitioner, Section 24(3) of the TNGST Act authorise levy of penal interest for the belated payment of TNGST only and not for

the alleged belated payment of additional sales tax for the simple reason that there is no substantial provision in the Tamil Nadu Additional Sales

Tax Act, 1970, (in short ""TNAST Act"") for levy of penal interest. According to the petitioner, Section 3-B of the TNAST Act is only a charging

section for levy and collection of penalty and it does not provide for levy of penal Interest for any belated payment of Additional sales tax.

4. The petitioner has further submitted that Explanation V to Section 2(1)(aa) of the TNAST Act was inserted by Act 23 of 2002-Gazette, dated

03.06.2002, with effect from 01.07.2002, which reads as follows:

Taxable turnover for the purpose of this clause in respect of a dealer liable to pay tax u/s 7-C of the said Act for the financial years commencing on

the 1st Day of April 1993, shall be the total value referred to in the said section:

5. It is the further case of the petitioner that since the above Explanation was introduced with effect from 01.07.2002, levy of penal interest for the

alleged belated payment of additional sales tax for the months of April and May 2002 is illegal. The petitioner has further submitted that the

monthly returns for the above said months were filed even before the insertion of the Explanation and therefore it is not proper on the part of the

respondent to demand penalty on additional sales tax.

6. Relying on the judgment of the Supreme Court in India Carbon Ltd. etc. Vs. State of Assam, , the petitioner has submitted that in the absence of

any substantial provision in the Additional Sales Tax Act to levy penal interest for the belated payment of additional sales tax, the provision, which

provides for levy of penal interest under the TNGST Act, cannot be applied. As TNAST Act does not authorize the levy of penal interest for the belated payment of additional tax, the impugned proceedings, levying the penal interest u/s 24(3) of the TNGST Act, is liable to be set aside.

7. The petitioner has further contended that the unilateral decision of the respondent directing the petitioner to pay penal interest is contrary to the

instructions of the Special Commissioner and Commissioner for Commercial Taxes dated 20.04.2001, wherein, instructions were given to the

assessing officers to issue notice, proposing penal interest u/s 24(3) of the TNGST Act and penalty should be imposed only after providing

sufficient opportunity to the assessees and therefore, the impugned order is violative of principles of natural justice.

8. The respondent in his counter affidavit has submitted that for the assessment year 2002-03, the petitioner was assessed to tax at Rs.

58,07,733/-, Surcharge at Rs. 1,72,102/- and Additional sales Tax at Rs. 10,59,632/-, vide proceedings dated 26.02.2007 under the TNGST

Act. As there was a delay in payment of Additional Sales Tax, penal interest was calculated and levied at Rs. 1,04,971/-, vide proceedings dated

21.04.2004. It is further submitted that Section 24(3) of the TNGST Act prescribes that on any amount remaining unpaid after the date specified

for its payment as referred to in Sub-section (1), the dealer or the person shall pay in addition to the amount due, interest at one and a half per cent

per month of such amount for the first three months of default and two per cent per month of such amount for the subsequent period of default. In

view of the provision, Rule 9 of the Tamil Nadu Additional Sales Tax Rules, 1970 (in short ""the TNAST Rules"") penal interest has been levied on

the admitted belated payment of additional sales tax.

9. The respondent has further submitted that the levy of penal interest is automatic and there is no provision u/s 24(3) of the TNGST Act that the

levy of interest should be imposed only after issuing show cause notice, as similar to the provisions contemplated in Sections 12(3), 16(2) etc., and

therefore, the contention of the petitioner that prior notice should be given, is not tenable. As the delay in payment of sales tax has been admitted

by the petitioner, penal interest can be levied for the belated payment of additional sales tax, as per. Rule 9 of the TNAST Rules.

10. The respondent has further submitted that as the impugned order is passed in furtherance of statutory provisions, the petitioner has to work out

his remedies before the authorities under the TNGST Act. The decision relied on by the petitioner is not applicable to the facts of this case and

there is no violation of principles of natural justice. For the above said reasons, the respondent has prayed for dismissal of the Writ petition.

11. The main contention of Mr. Ravindaran, learned Counsel for the petitioner is that in the absence of any substantial provision in TNAST Act,

authorising levy of penal interest, the penalty imposed by the respondent u/s 24(3) of the TNGST Act, for belated payment of additional sales tax

is without jurisdiction and therefore, the impugned order has to be set aside. For the above said preposition, he relied on a decision in India

Carbon Ltd. etc. Vs. State of Assam, .

12. Reiterating the averments made in the affidavit filed in support of the Writ Petition, he submitted that as the additional sales tax was due for the

months of April and May 2002, the respondent has no jurisdiction to collect penal interest prior to insertion of Explanation V to Section 2(1)(aa)

of the TNAST Act, which came into effect from 01.07.2002, and Section 3B of the TNAST Act does not provide for levy of penal interest for

belated payment of Additional Sales Tax.

13. Mr. R. Mahadevan, learned Additional Government Pleader, referring to the judgment in EID Parry (India) Ltd., v. Assistant Commissioner

(CT) (TNTST) reported in 1999 (113) STC 233, submitted that the issue relating to imposition of penal interest on the belated payment of

additional sales tax is no more res Integra and therefore, the impugned notice is well within the jurisdiction of the respondent. He further submitted

that pursuant to the decision of this Court in M/s. Wipro G.E. Medical System''s case, the Government have introduced an amendment to the

Tamil Nadu Additional Sales Tax Act, (Act 14 of 2005), by which, Section 2(1)(aaa) has been inserted enabling the levy of penal interest, as

specified in Sub-section 3 of Section 24 of the TNGST Act, in addition to such amount of additional sales tax or penalty due.

14. Learned Additional Government Pleader for the respondent further submitted that the said amendment has been given retrospective effect from

1st April 1970, when the TNAST Act, 1970 came into effect and therefore, the action of the respondent in demanding penal interest on the

belated payment is well within the jurisdiction of the respondent. As regards the decision in India Carbon''s case, he submitted that the above

judgment rendered in Central Sales Tax Act has no relevance to the case on hand, as there are sufficient provisions both in the TNAST Act and

the Rules framed thereunder and in view of the amendment, any action taken by any authority or officer or person in connection with the penal

interest, is valid in law.

15. On the question of issuing notice, learned Additional Government Pleader submitted that as the levy of penal interest on any amount remaining

unpaid is automatic, there is question of issuing notice to the assessee before levying penal interest and no such procedure is contemplated u/s

24(3) of the TNGST Act, 1959.

16. Heard Mr. Ravindaran, learned Counsel for the petititoner and Mr. S. Mahadevan, learned Additional Government Pleader for the

respondents.

17. The Tamil Nadu Additional Sales Tax Ad, 1970, has come into force from 1st April 1970. When the validity of the Act was challenged, the

Supreme Court in Kodar in State of Kerala reported in 1974 (34) STC 73 held that the tax levied under the Tamil Nadu Additional Sales Tax Act

was essentially a tax on the sale of goods, though it may be based on aggregate sales prices (that is, the turnover) and its levy being restricted to

the dealers having a turnover above a specified limit was only an enhancement in the rate of tax for those dealers. The levy of this tax is based on

the taxable turnover of the dealer, instead of increasing the rate of tax itself, was also upheld by the Supreme Court in K.M. Mohamad Abdul

Khader Firm Vs. State of Tamil Nadu and Others, .

18. Section 2(1)(aaa) of the Tamil Nadu Additional Sales Tax Act, the relevant charging Section reads as follows:

On any amount of additional tax or penalty imposed by the assessing authority remaining unpaid under this Act, the dealer referred to in Clause

(aa) shall pay interest as specified in Sub-section (3) of Section 24 of the said Act, in addition to such amount of additional tax or penalty due.

19. Section 24(3) of the Tamil Nadu General Sales Tax Act, which provides for levy of penal interest, is extracted hereunder:

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 one and a half per cent per month of such amount for the first

three months of default and two per cent per month of such amount for the subsequent period of default:

Provided that if 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 or revision 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 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 specified in the order of assessment or revision of assessment, as the case may be.

20. Sections 25 to 27 of the Parent Act, viz., TNGST Act provide for recovery of penalty or interest. Rule 9 of the TNAST Rules states that save

as otherwise expressly provided for in TNAST Rules, the provisions of the Tamil Nadu General Sales Tax Rules, 1959 shall apply mutatis

mutandis to the additional tax leviable u/s 2 of the Act. With the above statutory provisions relating to the levy of penal interest in the Parent Act as

well as in the Saving Clause provided in the TNAST Rules, the Tamil Nadu Special Tribunal in a batch of cases in E.I.D. Parry (India) Ltd. v.

Asst. Commr. (CT) (TNTST) reported in 1999 (113) STC 233, considered the following and other issues,

(i) The competence of the Assessing Officer in issuing notice/order which levied 24(3) penal interest for belated submission/payment of tax or

payment of tax on the basis of revised returns filed before final assessment or confirmation orders passed in Revision.

(ii)The validity of the notice/order which levied 24(3) penal interest on additional tax/surcharge tax for belated payment or payment made by filling

returns before the completion of final assessment or orders passed in revision justifying such orders.

(iii) The point of time, to which, the penal interest u/s 24(3) of the Act is leviable with reference to the revised returns filed and payments made.

(iv)The plea of refund due to the petitioner has not been adjusted properly and hence penal interest levied u/s 24(3) of the Act has to be cancelled.

Before considering the case laws cited by the learned Counsel appearing for the parties and also the facts of the case, the Tribunal at Paragraph 36

of the judgment, examined as to whether there are adequate provisions to levy penal interest for belated payment of additional sales tax and

surcharge and also implications of the judgment of the Madras High Court in Larsen and Toubro Limited v. State of Tamil Nadu reported in 1993

(88) STC 289, which struck down Rules 6-A and 6-B of the Rules and the scope of retrospective legislation by Act 25 of 1993 as regards liability

of civil contractors. After analysising the various provisions of the TNGST Act, 1959 and the Rules framed thereunder and the TNAST Act, 1970,

the Full Bench of the Special Tribunal, at Paragraphs 38, 39, 57, 62, 63 and 67, held as follows:

38. From the above provisions of Act and Rules quoted, it is quite clear that levy of additional sales tax as well as surcharge is by operation of law

and it is corollary to the tax payable under the principal Act. The words ""said Act"" occurring in Section 2(1)(b) of the Tamil Nadu Additional Sales

Tax Act, 1970 and in Section 3(2) and Section 3-A(2) of the Tamil Nadu Sales Tax (Surcharge) Act, 1971 refer to the Tamil Nadu General Sales

Tax Act, 1959. Thus, for any default in payment of additional sales tax or surcharge, the dealer is liable to penal interest as contemplated u/s 24(3)

of the principal Act.

39. The decision of the apex Court rendered in India Carbon Ltd. v. State of Assam [1997] 106 STC 460 in the context of levy of interest on

delayed payment of Central sales tax has no relevance in the present case. In that case it was held that Section 9(2-A) of the Central Sales Tax

Act, 1956 relating to offences and penalties has no reference to ""interest"" and therefore in the absence of a specific provision in the Central Act no

penal interest could be levied with reference to provisions in the State Act. However, in the present case, Additional Sales Tax Act and Surcharge

Act are State Acts and the levy of penal interest with reference to principal Act and Rules adopted in these State Acts and Rules is in order.

Section 3-B of the Additional Sales Tax Act inserted by Act 31 of 1996 relates to provisions of offences and penalties of the Tamil Nadu General

Sales Tax Act and not penal interest and therefore the plea that penal interest has been provided by Act 31 of 1996 with effect from April 16,

1997 is rejected.

57. In O.P. No. 3685 of 1997, the revisional authority in his order dated August 20, 1997 has clearly stated that the petitioner paid tax, surcharge

and additional tax belatedly. Already we have held that the provisions of the Additional Sales Tax Act and Surcharge Act and Rules made

thereunder are adequate to levy penal interest. Thus, when no tax was paid oTn turnover not eligible for deferral of tax with reference to monthly

returns filed, the levy of penal interest by the assessing authority is in order and accordingly the petition is dismissed.

62. O.P. No. 1269 of 1998, before final assessment taxes due for the months of September 1994, November, 1994 to January, 1995 have been

paid. Thus, the penal interest levied on belated payment of additional sales tax is in order and the petition is dismissed.

63. In O.P. Nos. 1766 of 1997 and 2612 of 1997 the correct rate of additional sales tax was not apparent on the face of the returns filed. The

increased rate of tax was within the knowledge of the petitioner only. Therefore for the belated payment of differential rate of additional sales tax,

penal interest levied u/s 24(3) of the Act is in order. In O.P. No. 340 of 1996 penal interest was levied on additional sales tax not paid with

reference to returns filed. Thus, the levy is in order. The order of the suo motu authority dated March 27, 1996 declining to entertain the claim of

relief is also in order. In O.P. No. 1083 of 1997, the assessing authority in the notice dated March 4, 1997 has stated that penal interest has been

levied only on the amount that remained unpaid. In such circumstances there is no case to interfere. Accordingly the petitions in O.P. Nos. 1766 of

1997, 2612 of 1997, 340 of 1996 and 1083 of 1997 are dismissed.

67. In T.P. No. 1769 of 1997, penal interest levied on additional sales tax that remained unpaid as per returns filed under the Act is in order.

Hence, the petition is dismissed.

21. Before the Tribunal, the petitioner therein mainly relied on the decision in India Carbon Ltd. etc. Vs. State of Assam, , and the Tribunal has

held that the above said decision has no relevance to the case, as it was rendered in the context of levy of interest on delayed payment of Central

Sales Tax Act. During the course of hearing of the present Writ Petition, it is brought to the notice of this Court by the learned Additional

Government Pleader for the respondent that the decision of E.I.D. Parry''s case has become final.

22. It is also brought to the notice that earlier, this Court in Wipro G.E. Medical Systems v. Tamil Nadu Taxation Special Tribunal and Ors. W.P.

No. 11632 of 1999, dated 14.09.2001, held that the levy of interest on the Additional Sales Tax under the TNAST Act is impermissible in the

absence of any specific provision in the Act and as a result of the decision, the interest could not be levied under the TNAST Act, on the delayed

payment of additional sales tax and the penalty imposed by the assessing officer. To obviate this difficulty and also to validate the action already

taken for the collection of interest on the delayed payment of additional sales tax and penalty, the Government have decided to make specific

provisions in TNAST Act with retrospective effect, by amending the said Act suitably.

23. Subsequently, by introduction of Act 14 of 2005, Section 2 of the Tamil Nadu General Sales Tax Act, 1970, was amended and after Clause

2(1)(aa), following clause shall be inserted:

(aaa) On any amount of additional tax or penalty imposed by the assessing authority remaining unpaid under this Act, the dealer referred to in

Clause (aa) shall pay interest as specified in Sub-section (3) of Section 24 of the said Act, in addition to such amount of additional tax or penalty

due.

24. In so far action taken by the Authority, Officer or persons in connection with the payment of such interest for delayed payment of additional tax

or penalty, Section 3 has been introduced with effect from 1st day of April 1970. The said Section is extracted hereunder:

Notwithstanding anything contained in the principal Act or in any judgment, decree or order of any court, tribunal or other authority, any interest

paid or payable for delayed payment of additional tax or penalty which is in conformity with the provisions of the principal commencing on the 1st

day of April 1970 and ending with the date of publication of this Act in the Tamil Nadu Government Gazette shall, for all purposes, be deemed to

be and to have always been, validly paid or payable in accordance with law, as if the principal Act as amended by Section 2 of this Act had been

in force at all material times when such interest was paid or became payable and accordingly all acts, proceedings or things done or taken by any

authority, officer or person in connection with the payment of such interest for delayed payment of additional tax or penalty shall, for all purposes,

be deemed to be and to have always been done or taken in accordance with law.

25. The amendment Act 14 of 2005, enabling the assessing authority to levy interest on any amount remaining unpaid after the specified date in

addition to such amount of additional tax or penalty due, has not been challenged so far. The main contention of the petitioner that in the absence of

any substantial provisions under the TNAST Act, authorising the levy of penal interest, the penalty imposed by the respondent u/s 24(3) of the

TNGST Act, for belated payment of additional sales tax is without jurisdiction, has already been answered by the Full Bench of the Special

Tribunal inE.I.D. Parry (India) Ltd. v. Asst. Commr. (CT) (TNTST) reported in 1999 (113) STC 233, and it has become final. That apart, the

above amendment in Act 14 of 2005, giving retrospective effect, for the levy of penal interest on the remaining amount unpaid after the specified

date, and the validation provision are squarely applicable to the facts of this case and therefore, the contentions of the petitioner that the demand

made by the assessing officer without jurisdiction, is not tenable.

26. The additional sales tax has to be paid on the prescribed date and after the due date, it becomes an amount remaining unpaid. It is not

determined afresh and therefore, the question of providing an opportunity of issuing notice before the levy of penal interest does not arise. In view

of the Full Bench decision of the Tamil Nadu Special Tribunal and the subsequent amendment, giving retrospective effect from 01.04.1970, the

contention raised by the petitioner are not tenable.

In the result, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

