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(2011) 03 MAD CK 0397

In the Madras High Court

Case No : Writ Petition No. 28660 of 2010

Perfect Power Systems (South) Pvt. Ltd. — APPELLANT

Vs

The Joint Commissioner and The Assistant Commissioner (CT) Harbour V Assessment — RESPONDENT

Date of Decision : 28-03-2011

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

Citation : (2011) 03 MAD CK 0397

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

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

Final Decision : Allowed

Judgement

M. Jaichandren, J.—At this stage of the hearing of the writ petition, the learned Counsel appearing for the Petitioner had relied on an earlier order of this Court, dated 2.12.2010, made in W.P. No. 24684 of 2010, in support of his contentions:

2. The relevant paragraphs 6, 7, 8 and 9 of the said order read as follows:

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 percent at 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.

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 6% 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 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 6% 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.

7. 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 18.9.1999, 7.11.1999, 30.4.2002, 31.7.2003 and 31.3.2009 respectively, consequent on which, penal interest is payable by the Petitioner. The order dated 30.3.2009 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 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 6% per annum on the said amount of 1/3rd of the arrears of tax. On payment of the same, the balance of arrear 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 31.3.2009.

8. 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 5.8.2010 demanding further payment by way of interest on the belated payment of tax, which, evidently, is contrary to Section 7(b) of the Act.

9. 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 Tamil Nadu Sales Tax (Settlement of Arrears) Act (Act 60 of 2008). No costs. Consequently, connected MP is closed.

3. The learned Counsel appearing for the Petitioner had further submitted that in view of the earlier order passed by this Court, on 2.12.2010, made in W.P. No. 24684 of 2010, the writ petition is to be allowed.

4. The learned Additional Government Pleader appearing for the Respondents had not refuted the submissions made by the learned Counsel appearing for the Petitioner. In such circumstances, the writ petition stands allowed. The Petitioner has to fulfill the conditions, as prescribed by the earlier order of this Court, dated 2.12.2010, as stated above. The first Respondent shall pass appropriate orders thereon, as prayed for by the Petitioner. No costs. Connected M.P. No. 1 of 2011 is closed.