(2015) 08 MAD CK 0188

In the Madras High Court

Case No : Writ Petition (MD). Nos. 12837 to 12847 of 2015 and M.P.(MD). No. 1 of 2015

Srinivasa Steel APPELLANT

Vs

The Joint Commissioner (CT) and Others RESPONDENT

Date of Decision : 10-08-2015

Acts Referred:

Citation : (2015) 08 MAD CK 0188

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Advocate : Lakshmi Sriram, for the Appellant; R. Karthikeyan, Additional Govt. Pleader, Advocates for the Respondent

Judgement

R. Subbiah, J—Since the issue involved in all these Writ Petitions are one and the same, they are taken up together and disposed of by a common order.

2. These Writ Petitions have been filed by the petitioner firm to call for the records of first respondent dated 07.07.2014 for the various assessment years and quash the same and consequently, direct the first respondent to accept the application made by the petitioner firm in Form I dated 30.04.2012.

3. Since the facts pleaded in all the Writ Petitions are similar in nature, for the sake of convenience, the facts narrated in W.P.(MD). No. 12837 of 2015, is taken into consideration:-

3.1. It is averred in the affidavit that the petitioner firm had entered into an agreement with the General Manager, District Industries Center, Trichy for IFST Deferral Scheme and the Eligibility Certificate was issued on 09.10.1995. It is submitted that the petitioner firm entered into an agreement with the Assistant Commissioner (CT), Trichy Town on 04.12.1995 for the repayment under the deferral scheme after a period of nine years. Further, the petitioner firm availed the Samadhan Scheme under the Tamil Nadu Sales Tax (Settlement of Arrears) Tax, 2011 by filing an application under Form I dated 30.04.2012. The petitioner firm availed the Settlement Scheme for the Tamil Nadu General Sales Tax Act AY 1995-1996 to 2001-2002 and Central Sales Tax Act AY 1996-1997 to 1999-2000. It is further submitted that the period given to the petitioner to enjoy the tax holiday was from 07.07.1995 to 06.07.2004 and the period for repayment of tax was from 07.07.2004 to 06.07.2014. It is submitted that the petitioner''s IFST Deferral agreement was cancelled on 16.12.2003.

3.2. While so, the petitioner firm was served with a show cause notice in Na.Ka. No. 3682/2012/A8 dated 22.05.2014 by the first respondent proposing to reject the petitioner''s application under the Samadhan Scheme. In the said notice, the petitioner had paid interest under the Samadhan Scheme from 16.06.2003 by taking it as the base for calculating interest. It is submitted that the first respondent cited a Circular issued by the Commissioner of Commercial Taxes in L. No. Drafting Committee No. 1/28518/2012 dated 28.02.2014 while stating that if an assessee was enjoying the Deferral Scheme and there was a violation of the agreement during the Deferral Scheme, the interest had to be calculated from the date of filing the monthly returns. The first respondent stated that the petitioner had wrongly calculated the penal interest by treating 16.12.2003 as the base and not from the date of filing the monthly return for the year 1995-1996. Further, the first respondent has stated that as per Section 6(3) of the Tamil Nadu Settlement of Arrears Act 29/2011, the applicant should have paid 90% of the arrears of tax and if not, the application could not be accepted.

3.3. As the petitioner''s alleges that the arrears of interest was more than 10%, the first respondent proposed to reject the petitioner''s application under Samadhan Scheme. While so, the petitioner filed a detailed reply dated 18.06.2014 pointing out that the tax should be assessed based on the date of cancellation of tax deferred payment plan and that the interest should be calculated after the period of the payment of the tax.

3.4. In support of her contention, the petitioner relied on M/s. Kalpatharu Spinning Mills Vs. Commercial Tax Officer made in W.P.(MD). No. 19060 dated 01.12.2010 and Amutha Mills Pvt. Ltd. Vs. Commercial Tax Officer (W.A. No. 1482 of 2006 and W.P. No. 41326 of 2006 dated 06.12.2006) wherein, this Court had held that interest held to be calculated only from the date of repayment period and not from the date of the violation or cancellation of the agreement. It is further stated by the petitioner that the IFST Deferral Scheme was brought into force by a Government order and that it cannot be overruled by a Circular issued by the Commissioner of Commercial Taxes. The petitioner further stated that even though the period of repayment as per the agreement started only from 01.09.2004 being the date of cancellation of the agreement and that the petitioner ought to have calculated the interest only from the repayment due dated 01.09.2005 as per the law laid down by this Court. The first respondent neither accepted the petitioner''s submissions regarding the correct date of calculating interest as the date on which the Certificate was cancelled nor accepted the binding decisions of this Court in Amutha Mills Pvt. Ltd. Vs.

Assistant Commissioner (CT) in W.A. 1482 of 2006 dated 06.12.2006 and in Sree Kalpatharu Spinning and Weaving Mills Vs. The Assistant Commissioner (CT) Coimbatore made in W.P.(MD). No. 19060 of 2009, dated 01.12.2010. Eventually, the first respondent stated that the petitioner''s agreement was not cancelled during the repayment of tax and the same was cancelled before that period and therefore, interest has to be paid from the date of filing the monthly returns. Accordingly, the petitioner''s Samadhan application was rejected by the second respondent vide the impugned notices referred to above. Challenging the same, the petitioner firm is before this Court for the relief stated supra.

4. The learned counsel for the petitioner submitted that in similar circumstances the Division Bench of this Court has considered the issue in question in the case of Amutha Mills Pvt. Ltd. Vs. Assistant Commissioner (CT) in W.A. 1482 of 2006 dated 06.12.2006, to state that the petitioner is liable to pay penal interest only from the date of cancellation of agreement and not from the date of returns. She further stated that following the said order, the learned Single Judge of this Court vide his order dated 01.12.2010 made in W.P.(MD). No. 19060 of 2009, had disposed of the said Writ Petition by making it clear that the Department is entitled to claim penal interest only from the date of repayment.

5. Per contra, the learned Government Advocate appearing for the respondents submitted that the decision relied on by the petitioner is not applicable to the case on hand, as the facts pleaded in the said order is different from the facts pleaded in these Writ Petitions. Further, he submitted that each case has to be decided according to the facts and circumstances of the case. The Writ Appeal order relied on by the petitioner firm is based on the factual aspects and it did not go into the legality of the issue involved. Further, the question of law has not at all been decided so far and therefore, the question of covering the same issue does not arise here. Since the issue on hand is of revenue in nature, every effort shall be made to protect the revenue of the Government. To sum up, the petitioner firm is liable to pay interest from the date of returns only and not from the date of cancellation and prayed for the dismissal of these Writ Petitions.

6. In order to give quietus to this matter, it is more relevant to extract the order of the First Bench of this Court in W.A. No. 1482 of 2006 dated 06.12.2006.

"....2. The learned counsel appearing for the appellant/petitioner submitted that as per the terms of the deferral agreement, in the event of default in the repayment of the IFST deferral loan, the loan can be recoverable along with the interest at 24% per annum calculated from the due date for repayment of loan. Therefore, the penal interest, if any, should be calculated only from the due date for repayment of the loan and not from the date on which the IFST deferral loan was availed. He submitted that the issue has already been settled by the Tamil Nadu Taxation Special Tribunal in O.P. Nos. 65 to 68 of 1998. The decision of the Special Tribunal has been accepted by the Commercial Taxes Department. This position is not disputed by the learned Special Government Pleader but he submitted that since the appellant/petitioner stopped the production in 2002, they are liable to pay the penal interest from November, 2002 in terms of circular of the Commercial Taxes and Religious Endowments Department dated 18.03.1994. However, a perusal of the said circular shows that this was only in the form of recommendation and this term has not been specifically incorporated in the agreement. In the circumstances, we are of the view that the appellant/ petitioner shall be liable to pay penal interest only with effect from June, 2003. This Writ Petition is disposed of accordingly.....

7. The order made in W.A. No. 1482 of 2006 dated 06.12.2006 still governs the field. Following the said order, subsequently, W.P. No.19060 of 2009 came to be allowed on 01.12.2010. Therefore, the order impugned in these Writ Petitions stand set aside and the Department is directed to collect the penal interest only from the date on which the agreement was cancelled and not from the date of returns filed by the petitioner firm.

In the result, these Writ Petitions are allowed. No costs, consequently, connected miscellaneous petitions are closed.

