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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-11-2026

CORAM

THE HONOURABLE MR.JUSTICE S.RAVEEKUMAR

WP No. 7105 of 2023

Case QR

CNR:{HCMA010369182023}

and

WMP No. 7182 of 2023

1. K.C.Jothinathan

Petitioner(s)

Vs

1. The State Tax Officer (FAC)
Office of the Asst. Commissioner (ST),
Dharmapuri.

Respondent(s)

PRAYER

Writ petition filed under Article 226 of the Constitution of India in the nature of writ of certiorarified mandamus, calling for the records relating to the demand notice dated 12.11.2022, issued by the respondent, quash the same in so far as charging of interest at the rate of 2 percent instead of 1-1/4 percent and demand of penalty is concerned and consequently direct the respondent to refund the sum of Rs.85,552/- paid by the petitioner towards penalty

For Petitioner(s): Mr. K.Venkatesan

For Respondent(s): Mr. B. Sivaraman
Government Advocate

ORDER

The petitioner has challenged the proceedings in Roc. No.300/2022/A3 TIN NO:33903282513 dated 12.11.2022, wherein the respondent has directed

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the petitioner to pay interest at the rate of 2% for the period from 21.11.2012 to 18.10.2021.

2. The counsel for the petitioner submits that the revised assessment order was passed on 21.11.2012 and the tax was paid on 17.10.2021. The learned counsel for the petitioner would submit that by the impugned proceedings, the respondent has demanded interest at the rate of 2% under Section 42(3) of the Tamil Nadu Value Added Tax (TNVAT Act) Act, 2007, which is *per se* illegal, as the assessment year is 2008-09 and as per the then applicable Section 42(3), interest for belated payment can be charged only at the rate of one and a quarter percent per month. The learned counsel for the petitioner, therefore, submits that the impugned order has to be set aside and the respondent has to re-calculate the interest at the rate of one and a quarter percent.

3. The learned counsel for the petitioner would also submit that no penalty can be demanded in the present case and the respondent is liable to refund the sum of Rs.85,552/- paid by the petitioner towards penalty.

4. Per contra, the learned counsel for the respondent would submit that the levy of interest is automatic under Section 42(3) and the revised assessment proceedings have not been challenged.

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5. The learned counsel for the respondent, further, submits that the revised order of assessment was passed on 20.11.2012 and since the same has attained finality, it cannot be indirectly questioned in the present petition. Therefore, no relief towards penalty can be granted in the present writ petition.

6. Heard both the counsels.

7. In the present case, the revised order of assessment came to be passed under Section 27 (1) (a) of the TNVAT Act on 20.11.2012, demanding a sum of Rs.1,71,103/- and penalty of Rs.85,552/-. The petitioner has paid Rs.2,44,977/- in two installments by way of two demand drafts dated 08.10.2021 and 21.10.2021. By the impugned proceedings, the respondent has demanded interest at the rate of 2% from 21.11.2012 to 18.10.2021. The demand is as per Section 42(3) of the TNVAT Act. It will be useful to refer to Section 42(3) of the TNVAT Act as it stood then before the amendment by Act 2013 with effect from 29.05.2013 and the same is extracted hereunder:

"42 (3) 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

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dealer or person shall pay, in addition to the amount due, interest at one and a quarter per cent per month of such amount for the entire 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 the 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."

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8. The provisions of TNVAT Act was amended, more particularly, Section 42(3) was amended with effect from 29.05.2013, increasing the rate of interest payable by a defaulting assessee to 2% from 1.25%. The amending Act did not give any retrospective effect to the amendment. The said amendment is neither clarificatory nor declaratory. Therefore, the said amendment is prospective in nature and cannot be applied to an earlier assessment year and to a case, where assessment order has been passed prior to the amendment,. Therefore, the assessing authority can levy and collect interest only at the rate of 1.25% per month.

9. In view of the same, the proceedings, demanding interest at the rate of 2% is unsustainable and is therefore, set aside. The matter is remanded back to the respondent to collect interest at the rate of 1.25% for the period of delay in making payment of the tax within a period of four weeks from the date of receipt of a copy of this order. In so far as the contention regarding penalty is concerned, the assessment is not under challenge and therefore, the correctness of the levy of penalty in the assessment order dated 21.11.2012 cannot be considered by this Court.

10. In the result, this writ petition is allowed and the impugned proceedings in Roc. No.300/2022/A3 TIN NO:33903282513 dated 12.11.2022

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is hereby quashed. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No
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To

1.The State Tax Officer (FAC)
Office of the Asst. Commissioner (ST),
Dharmapuri.

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S.RAVEEKUMAR J.

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