

## MADRAS HIGH COURT Judgments in VAT CST GST

by Sampathkumar V V

**Interest:** The default arising on non-payment of tax on an admitted liability in the case of self-assessment falls under Section 24(3) of the TNGST Act, 1959 read with Rule 18(3) which attracts automatic levy of interest whereas the default in filing incomplete and incorrect return falls under Rule 18(4) which the levy of interest is based on the adjudication by the Assessing Officer. **M/s. Sri Balaji Assemblies & Plastics (P) Ltd. Vs. AC, Selaiyur Assessment Circle W.P. No.13583 of 2020 Dated: 01.03.2021**

**Time to file appeal:** The learned Single Judge of this Court, while dismissing an earlier WP, granted liberty to the petitioner to file a statutory appeal within 30 days from date of receipt of a copy of that order. The petitioner produces evidence to show that the Managing Partner has been suffering from kidney failure and is continuing treatment for the same. In these aforesaid circumstances, the Court in this WP believed that the petitioner should be granted additional time to file appeal. **Tvl. Allied Petroleum Company, Vs The AC CT) (FAC), Trichy Road Assessment Circle, W.P. No.4828 of 2021 DATED: 02.03.2021**

**CST Order, Principles Of Natural Justice:** CST order dated 29.01.2021, for 2013-14, is assailed on the ground of violation of principles of natural justice. As against an original order of CST dated 31.12.2014, W.P.No.6979 of 2015 was filed and by order dated 17.03.2015, the HC directed the petitioner to appear before the respondent on 28.04.2015 and the officer to redo the assessment. Petitioner accordingly appeared before the AO on the stipulated date and nothing transpired thereafter till 2021 when, out of the blue, a final notice dated 08.01.2021 was issued after 6 years for which, the petitioner, pointed out that huge delay in the intervening period, and sought time till 28.02.2021 for filing objections. This request was neither accepted nor rejected. Personal hearing was also not afforded. The impugned order has come to be passed on 29.01.2021 which is in gross violation of principles of natural justice. Stating so, the impugned order is set aside. **New Consolidated Construction Co Ltd Vs. The AC (ST), Ayyanavaram Assessment Circle. W.P. Nos.5171 of 2021 DATED: 03.03.2021**

**Stay orders:** Three vital aspects to be looked into, in a tax dispute, while disposing of stay applications, i) prima facie case, ii) financial stringency and iii) balance of convenience, which have not been adverted to in the impugned proceedings. In view of this, the impugned order is set aside for non-application of mind, to be re-done de novo after hearing the petitioner. **M/s. NLC India Limited Vs ADC (ST) Cuddalore. W.P. Nos.4884, etc of 2021 and WMP Nos.5491, etc of 2021 DATED: 03.03.2021 09.04.2021.**

**GST Remittance:** As per contract between the members of the petitioner association, who are vendors of NLC and NLC, the consideration paid by the petitioners is inclusive of GST and liability in this regard is to be discharged by members of the petitioner association. Also, admittedly, the GST deducted has not been remitted in many cases, either fully or partly. As a consequence, NLC appears to have suffered a reversal of the ITC claimed by it. The impugned communication only seeks to enforce the contract qua NLC and its vendors. This is not a matter which warrants interference or attention of this Court and hence, this WP is dismissed. **The Neyveli NLC Contractors Welfare Assn, Vs. Chief Commissioner of GST and CE, TN and Puducherry Zone. W.P. No.5188 of 2021 DATED: 04.03.2021**

**Delay Condonation:** Period of limitation for filing of the first appeal, which is 90 days, expired on 03.03.2020 and further period of 30 days, provided for condonation of delay in filing of the first appeal, expires on 02.04.2020, falling during COVID-19 pandemic period. Following the orders of SC in a series of judgments which has extended time for filing of appeal till 31.01.2021, it is appropriate that the petitioner may represent its appeal before the

respondent and such appeals, if represented, within 2 weeks from today, will be taken on file by the first appellate authority without reference to limitation, the petitioner heard and appeals disposed in accordance with law. **Tvl. Athi Parasakthi Alloys Steels Pvt Limited Vs. AC (SST), Coimbatore, W.P. Nos.5301 and 5304 of 2021 DATED: 05.03.2021**

**Notice:** Petitioner has challenged a demand notice dated 25.01.2020 and it is submitted that no demand has been raised in the impugned communication and what is envisaged is only the filing of objections, if any, considering which further orders will be passed. In the light of the categorical assertion of the Ld. Counsel of respondent to the effect that communication dated 25.01.2020 is only a notice calling for objection, it is improper for the authorities to have issued a recovery notice and notice dated 21.02.2020 is thus quashed and this writ petition is allowed. **M/s. Maruthi Engineering Vs. Superintendent of GST & Central Excise, Thiruvallur I Range, W.P. Nos.5902 of 2020 DATED: 08.03.2021**

**Personal hearing:** Considering the issue of whether personal hearing has to be granted prior to finalization of proceedings in terms of Section 73 of GST Act, this Court in WP.No.13652 of 2020 held that Section 74(5) mandated a personal hearing to be granted in all matters prior to finalization of assessments. Since the petitioner has not been granted a personal hearing prior to finalization of the impugned proceedings, the impugned orders in regard to the periods 2017-18 and 2018-19 are set aside. **Golden Homes Pvt Ltd, Vs STO-I, Central Intelligence Cell, Intelligence - II, Chennai 6 W P Nos.2049 & 2050 of 2021 DATED: 08.03.2021**

**Limitation:** Since, no regular CST assessment has been framed, the date of deemed assessment is 31.10.2012. Any proceeding for assessment /reassessment should be initiated within 6 years from date of assessment vide section 27. As the date of deemed assessment is 31.10.2012, the proceedings for reassessment ought to have been initiated on or before 31.10.2018. Notice has, however admittedly been issued only on 01.04.2019, beyond the period of limitation. Hence, Impugned order is dated 03.09.2019 for the period 2011-12 is barred by limitation. **TCS Trade Links, Namakkal Vs STO, Namakkal (Town). W P No.33425 of 2019 DATED: 09.03.2021**

**Exemption and Input tax credit (ITC):** To deny the petitioner the benefit of ITC by thrusting an exemption not claimed by it, upon it, will be contrary to the scheme of the enactment. **TCS Trade Links, Vs. STO, Namakkal (Town). W.P. No.33280 of 2019 Dated: 11.03.2021**

**Works contract deduction:** The limited prayer is that while computing the taxability of the dyeing transactions, the standard deductions set out in Section 3B(2) Clause (a) to (e) of TNGST Act, 1959 have not been granted. The taxability of the transactions is beyond doubt and hence the deductions set out under the said 2(a) to (e) of Section 3B are to be granted. **M/s.Jansons Textiles Processors Vs. STO, Tiruchengode Town Assessment Circle, W.P. Nos.8695, etc DATED: 16.03.2021**

**Remand directions:** Petitioner, at pages 50 and 51 of the typed set filed in support of these Writ Petitions, has placed some particulars and tabulation of sales and purchases effected from other States, locally and by way of import which are based on materials and data available with the petitioner, though the same have, admittedly, not been produced before the AO. Thus, in the interests of justice, this issue is remitted to the AO, to be redone after hearing the petitioner and consideration of materials that the petitioner claims that it has in its possession. **M/s.Ponneri Steel Industries, Vs. AC (ST), Ponneri Assessment Circle W.P. Nos.6904 and 6906 of 2021 DATED: 17.03.2021**

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