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W.P.No.10379 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2023

CORAM:

The HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.10379 of 2020
and
W.M.P.No.12624 of 2020

M/s.K.I.International (India) Ltd.
Rep. by its Director,
Mr.Vinod Kothari,
New No.664, T.H.Road,
Tondiarpet,
Chennai - 600 081.

.. Petitioner

VS

1. The Principal Secretary /
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 5.

2. The State Tax Officer,
Group - III, Inspection I,
Intelligence I, No.1 PAP JM Building,
Greams Road, Chennai - 600006.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the first respondent in No.R2/5257/2019 and quash the impugned proceedings dated 20.05.2020 and further direct the first respondent to invoke Section 80 of the Tamil Nadu Goods and Services Tax Act, 2017 to extend the time for payment of balance of tax and interest determined by the second respondent in the order dated 11.11.2019 passed under 73 of the Tamil Nadu Goods and Services Tax Act, 2017 in GST/33AACCK6186E1ZM/2018 - 2019 order No: INS169181918191 in twenty four monthly instalments as requested by the petitioner in their applications dated 4.2.2020 and 21.2.2020.



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For Petitioner : Mr.P.Rajkumar
For Respondents : Ms.Amritha Dinakaran
Government Advocate
for R1, R2
No appearance for R3

ORDER

The petitioner is a Company and an assessee to State Value Added Tax under the provisions of the Tamil Nadu Goods and Services Tax Act, 2017. Admittedly, it did not file returns in Form – GSTR-3B for the period September, 2018 – March, 2019. (period in question)

2. There was an inspection in the premises of the petitioner on 11.03.2019 when several discrepancies were noted. The petitioner has unequivocally admitted to those discrepancies even at the time of inspection as revealed from communication dated 22.10.2019 wherein it accedes to the position that there has been non-payment of GST for the period in question.

3. Their explanation was to the effect that the Company had incurred loss on account of the fall in the prices of imported coal and that it was holding huge stock and was compelled to sell the same at unviable prices to avoid demurrage, interest and other dues to the port at Krishnapatanam.

4. At the time of inspection, sworn statement has also



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been recorded wherein the petitioner has likewise admitted liability for the period in question. The abstract of Goods and Services Tax payable for the aforesaid months has been, computed as per the petitioner and as set out in that communication is as follows:-

"For the month of September, 2018:

Tax payable	Input credit	Tax paid	Balance payable
7,68,15,190	2,95,44,168	1,53,06,959	3,19,64,063

For the month of October, 2018:

Tax payable	Input credit	Tax paid	Balance payable
5,44,99,090	3,72,34,558	-	1,72,64,532

For the month of November, 2018:

Tax payable	Input credit	Tax paid	Balance payable
4,40,59,337	3,94,60,687	-	45,98,650

For the month of December, 2018:

Tax payable	Input credit	Tax paid	Balance payable
1,32,06,677	1,25,05,064	-	7,01,613

For the month of January, 2019:

Tax payable	Input credit	Tax paid	Balance payable
2,78,97,903	1,42,31,916	-	1,36,65,987

For the month of February, 2019:

Tax payable	Input credit	Tax paid	Balance payable
1,30,45,283	99,68,105	-	30,77,178

For the month of March, 2019:

Tax payable	Input credit	Tax paid	Balance payable
3,73,95,394	2,92,81,923	-	81,13,470

5. They conclude with a plea for mercy assuring the respondents that they would remit the amounts due in 24 instalments along with interest. This request has come to be rejected on 31.10.2019 by the Commissioner holding that the facility of grant of instalments under Section 80 is only in respect of disputed tax and not admitted tax.



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6. It is to be noted, and this is very relevant, that on 11.11.2019, the assessment of the petitioner for the period 2018 – 2019 had been taken up under Section 73 of the Act. Notices had been issued to the petitioner and responses solicited. One of the issues that arose related to the very lacunae that had been deducted at the time of inspection, that the petitioner had filed details of outward supplies in Form GSRT - 1 for the period in question which showed that substantial sales had been made by it, though it had not filed monthly returns in Form GSTR - 3B.

7. The allegation as against the petitioner was that there had been sales suppression. In alignment with the stand taken by the petitioner at the time of inspection and even thereafter pleading for instalments, the petitioner conceded to this issue at the time of assessment. Based on the sales suppression, the tax due was computed at a sum of Rs.9,20,83,550/-.

8. The relevant portion in the order of assessment reads as follows:-

"Difference between Taxable value reported in GSTR-3B and GSTR-I (Suppression of outward supply)

The lesser reporting of outwards supply in GSTR-3B when compared to GSTR-1, for the year 2018-19 prove that the registered tax payer had not reported certain outward supplies. The reason for the same may be furnished, failing which necessary tax for those outward supply will be levied according to the provisions of the



Act.

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Month	GSTR-3B Tax Due				GSTR Tax Due B2B Invoices				Diff.
	IGST	CGST	SGST	Total	IGST	CGST	SGST	Total	
Sep'18	2283923	16181082	16181082	34646087	22839236	26981082	26981082	76801400	-42155313
Oct'18	3156455	14871317	14871317	32899089	3158455	25671317	25671317	54499080	-21600000
Nov'18	4390778	19834283	19834283	44059344	4390778	19834283	19834283	44059344	0
Dec'18	4401677	4402500	4402500	13206677	4401677	4402500	4402500	13206677	0
Jan'19	3536441	5205731	5205731	13947903	3536441	12180731	12180731	27897903	-13950000
Feb'19	0	3406832	3406832	6813664	3324619	4860332	4860332	13045283	-6231619
Mar'19	1043470	14102653	14102653	29248776	1988470	17703462	17703462	37395394	-8146618
Total	46840817	176583315	176583315	400007447	71665749	210212624	210212624	492090997	-92083550

9. The response of the petitioner before the Assessing Authority was that they accepted the tax demanded and would remit the same after adjusting available credit. After considering the reply of the petitioner, this is conclusion of the officer:-

"Proper Officer's Remarks:

The reply of the person is perused and it is ordered that the tax difference of Rs.92083550/- is payable along with interest u/s 50(3) of TNGST Act, 2017.

2018-19	Diff (Tax Due)			Order Date	Due Date of filing of return	No of Days delayed	Interest		
	IGST	CGST	SGST				IGST	CGST	SGST
Sep'18	20555313	10800000	10800000	11/11/2019	10/20/2018	387	5230623	2748230	2748230
Oct'18	0	10800000	10800000	11/11/2019	11/20/2018	356	0	2528088	2528088
Jan'19	0	6975000	6975000	11/11/2019	2/20/2019	264	0	1210784	1210784
Feb'19	3324619	1453500	1453500	11/11/2019	3/20/2019	236	515908	225551	225551
Mar'19	945000	3600809	3600809	11/11/2019	4/20/2019	205	127380.8	485369	485369



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2018-19	Diff (Tax Due)			Order Date	Due Date of filing of return	No of Days delayed	Interest		
Total	24824932	33629309	33629309				5873912	7198022	7198022

Please note that the interest has been calculated up-to the date of passing of the order. While making payment, for the period between the date of order and the date of payment shall also be worked out and paid along with the dues stated in the order."

10. The petitioner continued its request for instalments and the request filed on 04.02.2020 has been rejected by impugned order dated 20.05.2020 reiterating the original view that had been expressed by the first respondent to the effect that Section 80 would not be applicable in cases of arrears in payment of admitted tax.

11. This writ petition has been instituted on the ground that benefit under Section 80 of the grant of instalments should have been extended to the petitioner. Section 80 reads as follows:-

"On an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed:

Provided that where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the



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person, be liable for recovery."

12. The object of Section 80 is to benefit an assessee who approaches the Commissioner for a scheme of instalments. The sole exception to the application of Section 80 is in respect of admitted tax. The language in Section 80 is *'other than the amount due as per the liability self assessed in any return'*.

13. The petitioner thus argues that the form GSTR I does not comprise a return and thus the exclusion that is set out under Section 80 would not apply to it. This argument is rejected in limine for the following reasons. Section 2 (37) defines 'a return', to mean *'any return prescribed or otherwise required to be furnished by or under this Act or the Rules made thereunder'*.

14. Section 37 onwards till Section 48 falling under Chapter IX and entitled '*Returns*' proceeds on the basis that the various forms prescribed for filing by assesseees, either setting out details of inward or outward supplies or tax credit, would all constitute returns. Specific reference may be made to Section 39 which deals with furnishing of returns and reads as follows:-

"Furnishing of returns.—

(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services



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or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof.

(2) A registered person paying tax under the provisions of section 10 shall, for each quarter or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable and tax paid within eighteen days after the end of such quarter.

(3) Every registered person required to deduct tax at source under the provisions of section 51 shall furnish, in such form and manner as may be prescribed, a return, electronically, for the month in which such deductions have been made within ten days after the end of such month.

(4) Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within thirteen days after the end of such month.

(5) Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within twenty days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier.

.....

(7) Every registered person, who is required to furnish a return under subsection (1) or subsection (2) or subsection (3) or subsection (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return.

(8) Every registered person who is required to furnish a return under subsection (1) or sub-



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section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period."

15. Inter alia Section 39 refers to '*a return, .. , of inward and outward supplies of goods or services or both..*'. The return of outward supplies is in form GSTR 1 and is the return that has been filed by the petitioner. Thus, the argument that GSTR 1 only deals with 'details' and hence would not constitute a statutory return is unacceptable and contrary to the scheme of the Act.

16. Learned counsel for the petitioner also attempts to state that the impugned order under Section 80 has been passed even prior to the assessment having framed under Section 73. However, Section 80 makes no reference to an assessment at all. It only talks of turnover that has been self-assessed. In this case, the petitioner has filed the prescribed form setting forth the details of the outward supplies and the question of assessment does not arise. Incidentally, an assessment has also been made proximate to the proceedings for inspection when also the petitioner has acceded to the position that there has been suppression of sales.

17. Accepting the argument of the petitioner would tantamount to a situation wherein a delinquent assessee, one who has omitted to file a return of monthly turnover but has filed the prescribed return reflecting taxable sales, is allowed the benefit



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under Section 80, of an instalment scheme. The object of Section 80 is only to benefit an assessee who has been complaint in effecting payment of the admitted tax.

18. In this case, while the petitioner has filed returns it has not paid the tax and hence its barred from obtaining benefit under Section 80. The conclusion as aforesaid is supported by a decision of the Orissa High Court in the case of *M/s.P.K.Ores Pvt Ltd @ M/s.PK Minings Pvt Ltd v Commissioner of Sales Tax & another* [W.P.(c) No.10335 of 2022 dated 06.05.2022].

19. Impugned order is thus sustained and this writ petition is dismissed. No costs. Connected miscellaneous petition is closed.

05.04.2023

Index:Yes/No
Neutral Citation:Yes
ssm

To:

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Commissioner of Commercial Taxes,
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DR. ANITA SUMANTH,J.

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