



ABSTRACT

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M. S. J. A. D. C. L. P. R.

Commercial Taxes Department – Waiver – Waiver of tax arrears on works contract payable by Tvl. Union Leather Company, Chennai for the period from 1984 to 1985 under the Tamil Nadu General Sales Tax Act, 1959 – Orders – Issued.

COMMERCIAL TAXES AND REGISTRATION (D2) DEPARTMENT

G.O.(D)No.322

25522

Dated: 01.09.2016

துன்முகி, ஆவணி 16

திருவள்ளூர் ஆண்டு 2047

Read:

1. The Special Commissioner/Commissioner of Commercial Taxes, Lr.No.DCII/26374/93, dated 29.06.1993.
2. The Principal Secretary/Commissioner of Commercial Taxes letter No.DCII/22110/2007, dated 11.03.2014.
3. Government letter No.4491/D2/2011- 5, Commercial Taxes and Registration (D2) Department, dated 02.06.2014.
4. Minutes of the waiver committee DCII/22110/2007 dated 17.07.2014.
5. The Principal Secretary/Commissioner of Commercial Taxes letter No. DCII/22110/2007, dated 18.07.2014.

ORDER:

Tvl. Union Leather Company, Chennai, reported a total and taxable turnover of Rs.2,53,240/- and 'Nil' respectively and filed returns for the Assessment year 1984-1985. The assessing authority found the dealer to have received a sum of Rs.31,27,255/- towards execution of works contracts during the period from 01.10.1984 to 31.03.1985. Even though there was no substantive provision for making assessment on 'works contracts' in the Tamil Nadu General Sales Tax Act, 1959 by invoking Rule 6-B(b) of the Tamil Nadu General Sales Tax Rules, 1959 the Assessing Authority allowed pro-rata exemption at 30% of the above turnover and determined the taxable turnover for the year at Rs.21,89,080/- and assessed it at 5% multi point. The Tax, Surcharge, Additional Surcharge and the Additional Sales Tax liabilities consequential of the above assessment totaled to Rs.1,47,764/-. The said assessment order was passed by the Commercial Tax Officer, Periamet Assessment Circle on 30.11.1985.

2. In the meanwhile, based on the case law reported in 88 STC page 289 (in the case of M/s. Larsen & Toubro Ltd., Vs State of Tamil Nadu), in the reference first read above the Special Commissioner/Commissioner of Commercial Taxes issued

instruction in respect of assessment of "woks contract for the period from 01.10.1984 to 25.06.1986" as follows:-

"The assessments already finalized for the above period are not legally valid because of the High Court's judgement in the case of Larsen & Toubro (88 STC 289) and also in view of the fact that section 3-B is in force from 26.06.1986 only. They may be cancelled and the tax paid to the department may be permitted to be adjusted towards future dues, provided that if the assessee has collected any tax and furnishes proof to show that he has refunded the tax collected duly. Action may be dropped in all cases pending finalization for this period."

3. The Principal Secretary/Commissioner of Commercial Taxes in the reference second read above stated that since the assessment in this dealer's case was finalized as early as on 30.11.1985, the instructions issued, in the reference first read above much later from the Commissioner's office it could not be of any avail to erase the tax liability created by the assessing officer. As the Assessing Officer could not rectify the (legal) mistake in his assessment order, by recourse to Section 55 of the Tamil Nadu General Sales Tax Act, 1959 owing to limitation of time (i.e. Five years) the demands created in the assessment order dated 30.11.1985 have therefore remained as uncollectible arrears in the books of the Assistant Commissioner (Commercial Taxes), Periamet Assessment Circle, Chennai. However, under the given facts of this case, where the tax demand is not legally sanctioned, which had resulted in a situation that any coercive action for its collection is not possible, the Principal Secretary/Commissioner of Commercial Taxes has informed only the Government can order to remit the said illegal and uncollectible arrear, by recourse to Section 17 (4) of the Tamil Nadu General Sales Tax Act, 1959, by way of a notification. Therefore he sent proposal in the reference 2nd read above for waiver of arrears under Tamil Nadu General Sales Tax Rules, 1959 for the assessment year 1984-1985 (i.e., for the period from 01.10.1984 to 31.03.1985) payable by Tvl.Union Leather Company, Chennai as detailed below :-

Tax Due	:	Rs.1,09,454.00
Surcharge Due	:	Rs.5,473,00
Additional Surcharge Due	:	Rs.5,473.00
Additional Sales Tax Due	:	Rs.27,364.00
Total Due	:	Rs.1,47,764.00

4. In the reference third read above, the Principal Secretary/Commissioner of Commercial Taxes was requested to place the proposal for waiver of tax arrears of Rs.1,47,764/- payable by Tvl.Union Leather Company, Periamet, Chennai before the Waiver Committee constituted vide G.O.(D)No.428, Commercial Taxes and Registration (D2) Department dated 25.8.2006 for its decision.

5. Accordingly, the Principal Secretary/ Commissioner of Commercial Taxes has placed the proposal before the waiver committee for its decision in the reference fourth read above as follows and requested to issue waiver orders in the reference fifth read above :-

"Considering the fact that the tax demand in this case is not legally sanctioned, which had resulted in a situation that any coercive action for its collection is not also legally possible, the proposal for remission of the tax arrears of Rs.1,47,764/- (Rupees One lakh forty seven thousand seven hundred and sixty four only) payable by Tvl.Union Leather Company, Periamet, Chennai under section 17(4) of the Tamil Nadu General Sales Tax Act, 1959 is placed before the Waiver Committee for its decision"

The Waiver Committee has agreed to the above proposal.

6. The Government after careful examination, have decided to accept the decision of the waiver committee and hereby waive an amount of Rs.1,47,764/- (Rupees One lakh forty seven thousand seven hundred and sixty four only) being tax arrears payable by Tvl.Union Leather Company, Periamet, Chennai for the assessment year 1984-1985 under item 7 of Appendix 21 of Chapter-II of the Tamil Nadu Financial Code Volume-II.

7. This order issues with the concurrence of the Finance department vide its U.O.No.64093/Rev/2014, dated 29.02.2016.

(By Order of the Governor)

Dr C. CHANDRAMOULI
ADDITIONAL CHIEF SECRETARY (FAC)

To
✓ The Additional Chief Secretary/ Commissioner of Commercial
Taxes, Chennai – 5
The Joint Commissioner concerned,
(through the Additional Chief Secretary/ Commissioner of
Commercial Taxes, Chennai – 5)
Tvl. Union Leather Company, Periamet, Chennai
The Principal Accountant General, Chennai – 8

Copy to:
The Finance (Revenue) Department, Chennai – 9
Stock file/Spare copies.

//Forwarded by Order//


SECTION OFFICER

9/9/16