IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.21561 of 2015
and
M.P.No.1 of 2015

Rambal Ltd.
rep. by its Managing Director T.A.Sridhar
No.20 Corporation Road Seevaram
Chennai- 600 096 [Petitioner]

Vs

Assistant Commissioner (CT)
Sholinganallur Assessment Circle
No.98 A.V.Church Road
Besant Nagar Chennai-90 [Respondent]

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorari to call for the impugned assessment proceedings of the respondent passed in TIN 33270922801/2007-08 dated 27.5.2015 and quash the same in so far as it relates to imposition of penalty under section 27 (3)(b) amounting to Rs.24 07 837/- and under section 27 (4) amounting to Rs.8 771/-.

For Petitioner : Mr.R.Raghavan

For Respondent : Mr.S.Kanmani Annamalai, AGP (T)

O R D E R

Heard the learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes), who took notice for the respondent and with their consent, the writ petition is taken up for final disposal at the admission stage.

2. This writ petition has been filed by Rambal Limited, challenging the impugned order passed by the Assistant Commissioner (CT), Sholinganallur Assessment Circle, Chennai in TIN 33270922801/2007-08, in and by which, the respondent, the Assistant Commissioner, after taking into account that the ITC was already adjusted during the year 2006-07, levied penalty under Section 27(3)(b) amounting to Rs.24,07,837/- and under Section 27(4) amounting to Rs.8,771/-

3. Learned counsel for the petitioner would submit that the grievance of the petitioner is that the Assessing Officer has no legal ground to levy the aforementioned penalty, since the petitioner, even before the issuance of notice dated 19.05.2014, has paid the tax component on 21.03.2014, by way of separate cheque Nos.544726 and 544727 through their letter dated 21.03.2014 before the Assessing Officer with proper acknowledgement. Subsequently, the said amount was also credited to account of the respondent on 26.03.2014 as per the petitioner's Bank Account and therefore, the notice dated 19.05.2014 issued by the respondent, proposing to levy penalty, although the petitioner has paid the tax, has no legal legs to stand.

4. In support of his above submissions, the learned counsel for the petitioner also placed on record a Division Bench Judgement of this Court reported in [2010] 29 VSY 20 (Mad) in the case of LINGAM AND SONS Vs. STATE OF TAMILNADU, wherein referring to another Division Bench Judgement of this Court reported in [2002] 125 STC 107 in the case of Chennai Textile Chemicals Private Limited vs. State of Tamil Nadu, wherein, it is held that if the assessee at the time of final assessment found to have otherwise paid any amount already before such final assessment, sufficient to go to reduce the tax liability ultimately determined the imposition of penalty to that extent is reduced, this Court has held that the impugned orders therein are not sustainable. On that basis, he prayed for setting aside of the impugned order, since on the date of issuance of notice dated 19.05.2014, the petitioner was not getting any tax liability from his side.

5. Per contra, learned Additional Government Pleader (Taxes) submitted that the petitioner was originally issued with a notice dated 27.06.2013 for the assessment year 2007-08, however, when final order was passed on 11.03.2014, the respondent has levied penalty, which lead to the filing of a writ petition in W.P.No.10346 of 2014 before this Court on the ground that the notice dated 27.06.2013 have not indicated any proposal for levy of penalty and therefore, the assessment order imposing penalty cannot stand. The

petitioner also filed W.P.Nos.10347 to 10350 of 2014 on the same ground for the assessment years 2008-09, 2009-10, 2010-11 and 2006-07 and this Court, by a common order dated 09.04.2014 set aside the impugned respective assessment orders with liberty to the Assessing Officer to re-do the exercise, after calling for objections from the petitioner and after affording an opportunity of personal hearing to the petitioner, of course, by treating the impugned orders as show cause notices. Subsequently, a notice dated 19.05.2014 was issued calling for objections from the petitioner. However, in the meanwhile, the petitioner the petitioner has paid the tax on 21.03.2014. However, taking advantage of the order passed by this Court, the petitioner is before this Court.

6. I do not find any merits in the submissions made by the learned Additional Government Pleader for the reason that even well before the order passed by this Court on 09.04.2014 in W.P.Nos.10346 to 10350 of 2014, the petitioner has paid the tax component on 21.03.2014. Therefore, it is not open to the respondent to find fault with the petitioner for levying penalty, as though the petitioner has not paid the tax. As rightly brought to the notice of this Court by the learned counsel for the petitioner, the ratio laid down by the Division Bench of this Court in the decision reported in 29 VST 20 cited supra also squarely supports the case of the petitioner, the relevant portion of which is extracted below:-

> "7. In the typed set of papers, the letter of the petitioner dated January 7, 1998 enclosing cheque No.697629 dated January 7, 1998 for Rs.14,905 has been filed. Before us, the learned counsel for the petitioner has also produced bank statement of accounts of the petitioner indicating encashment of cheque No.697629 for Rs.14,905/- on January 10, 1998 As per the assessment order (January 8, 1998), the balance tax payable was only Rs.10,332/- whereas even on January 7, 1998, the petitioner has given cheque bearing No.697629 for Rs.14,905/-. Even though, the cheque for rs.14,905/- was encashed on January 10, 1998, it relates back to the date of the cheque.
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> In Chennai Textile Chemicals Private Limited vs. State of Tamil Naud [2002] 125 STC 107, the Division Bench of this Court held as under:
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> > "21. … Even though in a given case or more than one case, the quantum of turnover suppressed or the tax sought to be avoided also, at times, may be one and the same, if the particular assessee at the time of final

assessment found to have otherwise paid any amount already before such final assessment, sufficient to go to reduce the tax liability ultimately determined the imposition of penalty to that extent is reduced…"

Since cheque bearing No.697629 dated January 7,1998 for Rs.14,905/- was given by the assessee even on January 7, 1998, as per the above decision, levy of penalty under section 12(3) of the Act is not justified. Both the AAC (CT) and the STAT have not taken note of the payment of the amount by way of cheque dated January 7,1998, and therefore, the impugned orders cannot be sustained".

7. A mere reading of the above observations clearly shows that if any assessee at the time of final assessment found to have otherwise paid any amount already before such final assessment, to that extent tax liability has to be reduced, ultimately determination of imposition of penalty to that extent is also to be reduced.

In such view of the matter, the writ petition is allowed and the impugned order is set aside. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

To

Assistant Commissioner (CT)
Sholiinganallur Assessment Circle
No.98, A V Church Road
Besant Nagar, Chennai 600 090

1 CC to Mr.N.Murali, Advocate SR.No. 39283

1 CC to the Spl.Government Pleader (Taxes), SR.No. 39435

WP No.21561 of 2015

KGK (CO)
PSI (21.08.2015)