IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.10104 and 10105 of 2004

N.Viswanathan
Proprietor
Kumaravel Traders ... Petitioner in both Wps

Vs

The Deputy Commercial Tax Officer
Ram Nagar Circle,
Coimbatore - 18. ... Respondent in both WPs

Writ petitions have been filed under 226 of the Constitution of India for the issuance of writ of certiorari to call for the records of the respondent herein in his proceedings in Nos. TNGST 1980895/ 2000-2001 dated 7.5.2003 and TNGST 1980895/2001-2002 dated 19.6.2003 respectively and quash the same.

For Petitioner : Mr.B.Ravindran for
Mr.Chandran Karuppiah

For Respondent : Mr.S.Kanmani Annamalai,
Addl. Govt. Pleader (T)

COMMON ORDER

Challenging the assessment orders passed by the respondent relating to the years 2000-01 and 2001-02, the petitioner has filed the present writ petitions.

2.According to the petitioner, the petitioner is registered under the TNGST Act and also under the CST Act. He duly filed returns for the assessment years 2000-01 and 2001-02. On the basis of the same, original assessment was completed. Thereafter, on scrutinising the same, revision of assessment along with penalty were proposed, on the ground that the petitioner had not reported the last purchase turnover of waste paper and not paid the tax due thereon. Accordingly, separate notices were issued, calling for objections from the petitioner. But the petitioner did not file any objection. Therefore, the assessment orders for the years in question came to be passed by the respondent. Aggrieved against the same, the petitioner is before this court.

3.The learned counsel for the petitioner submitted that during the relevant point of time, tax for interstate sales of waste paper was not properly brought to the notice of the petitioner and when it was brought to his notice, the petitioner paid the same immediately. Hence, the learned counsel for the petitioner prayed for reduction of the penalty levied by the respondent.

4.On the other hand, learned Additional Government Pleader appearing for the respondent submitted that non-reporting the last purchase turnover of waste paper would amount to evasion of tax and hence, levy of penalty by the respondent is justified.

5.I have considered the submissions made on both sides and perused the materials available on record.

6.As per TNGST Act, the last purchase of waste paper was inserted as entry 56(ii)(c) of Part B of I schedule from 27.03.2002. The submission of the learned counsel that the said entry was brought in only during the fag end of the assessment year, due to which, there arose some confusion among dealers, has some force. Further, there is no willful non disclosure of turnover by the petitioner. Thus, considering the facts and circumstances of the case, this Court is of the view that the petitioner had reported the entire portion of the turnover of waste paper at the time of original assessment itself and non-disclosure of last purchase of waste paper alone is due to inadvertence of the petitioner and the same need not lead to levy of penalty at 150%. Hence, the penalty levied by the respondent at 150% is reduced to 50% for each assessment year in question.

7.Accordingly, both the writ petitions are disposed of. The time for payment of 50% of penalty for each assessment year as reduced by this court is four weeks from the date of receipt of a copy of this order, failing which, it is open to the respondent to collect entire penalty from the petitioner. No costs.

s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To

The Deputy Commercial Tax Officer
Ram Nagar Circle,
Coimbatore - 18.

+ 1 cc to Special Govt.Pleader (Taxes) SR 66527

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prk28/12 W.P.Nos.10104 and 10105 of 2004