IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 18.2.2015.

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.4158 of 2015
and
M.P.No.1 of 2015

M/s. Amarprakash Developers
(P) Ltd. Represented by its Director No.42
Rajendra Prasad Road Chennai-44 ... Petitioner

vs.

The Assistant Commissioner(CT)
Chrompet Assessment Circle
Chennai 600 006. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records of the respondent in his proceedings in TIN: 33900946268/2012-13 and quash the assessment order dated 09.01.2015 made therein.

For Petitioner : Mr.C.Subramanian

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

ORDER

Petitioner has come forward with the aforesaid prayer.

2. The case of the petitioner is that inspection was conducted by the Enforcement Wing and thereafter, on 17.9.2014, the respondent issued a revision of assessment notice under section 27 of the Tamil Nadu Value Added Tax Act, 2006 based on the proposals forwarded by the Enforcement Wing. The respondent chose to issue the notice to the petitioner proposing to assess under section 22(4) of the Tamil Nadu Value Added Tax Act, 2006 by making an addition of 2% to the taxable turnover reported by the petitioner on the ground that the petitioner's total turnover is in excess of one crore rupees and the petitioner failed to to file the mandatory audit report in Form WW for the assessment year 2012-13. The petitioner sought for extension of time apart from paying Rs.10,000/= fine as contemplated under section 63-A of the Act. For the sake of convenience, Section

63-A of the Act is extracted below:-

> "Section 63-A Accounts to be audited in certain cases: Section 63(1) Every registered dealer whose total turnover including zero-rate sale and sale in the course of inter-State trade or commerce as specified in section 3 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) in a year, exceeds one Crore rupees, shall get his accounts in respect of that year, audited by an Accountant and submit a report of such audit in the prescribed Form, duly signed and verified by the Accountant, to the Assessing authority, within such periods may be prescribed.
>
> Explanation. For the purpose of this section "Accountant"means, a chartered accountant as defined in the Chartered Accountants Act, 1949 (Central Act 38 of 1949) or a cost accountant as defined in the Cost and Works Accountants Act, 1959 (Central Act 23 of 1959).
>
> Section 63(2) If such registered dealer fails to get his accounts audited and submit a report of such audit within the prescribed period, as required in sub-section (1), the Assessing authority may, after giving a reasonable opportunity of being heard, direct such registered dealer to pay by way of penalty of sum of rupees ten thousand, in addition to any tax payable, in respect of the said period:
>
> Provided that, this section shall not apply to the departments of Central and State Governments, local authorities, the railway administration as defined under the Railways Act, 1989 (Central Act 24 of 1989), the Tamil Nadu State Road Transport Corporations and similar such registered dealers, as may be notified by the Government."

3. On 23-12.2014, the respondent issued notice granting final opportunity and the petitioner filed their objections on 29.12.2014 in response to the first notice dated 17.9.2014 and sought for extension of time to file objections for the notices dated 7.11.2014. However, the respondent passed the impugned order confirming the proposals contained in the two notices dated 17.9.2014 and 7.11.2014. The petitioner contended that the provisions of section 63-A of the Act requires every registered dealer whose total turnover in a year exceeds one Crore rupees to get their accounts in respect of that year, audited by an Accountant and submit a report of such audit in the prescribed Form and on failure to do so, prescribes levy of

penalty of a sum of Rs.10,000/= in addition to any tax payable.

4. Therefore, the consequence of non-filing of the audited accounts attracts only penalty and levy of 2% of the reported taxable turnover is without authority of law. The learned counsel for the petitioner submitted that the petitioner had paid the penalty of Rs.10,000/= and the same has been acknowledged by the respondent.

5. The petitioner drew the attention to the impugned order wherein it has been stated as follows:-

> "In respect of the defects pointed out in this office notice dated 7.11.14 even though they have acknowledged the notice vide their letter dated 19.12.14, the dealers have not filed any objection and the proposals are confirmed."

6. Heard both sides.

7. Admittedly, the petitioner has sought for time and he has not given any reply in detail. The respondent is unable to refute the contention. A reading of section 63-A makes it very clear that levy of 2% of the reported taxable turnover on the petitioner is not mentioned in section 63-A of the Act. The notice dated 7.11.2014 refers to imposing of 2% on account of probable increase in sales.

8. When the Department had chosen to proceed against the petitioner for violation of Section 63, they cannot impose fine of 2% to the taxable turnover. That apart, the petitioner has also not submitted their objections and they sought for time. Hence, the impugned order dated 9.1.2015 is set aside and the matter is remitted to the authority for consideration of the case on merits afresh and in accordance with law. The petitioner is directed to appear on personal hearing on 3.3.2015.

9. The writ petition is disposed of accordingly. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssk.

To

The Assistant Commissioner(CT)
Chrompet Assessment Circle
Chennai 600 006.

1 cc to Mr.C.Subramanian ,Advocate, SR.No.8865
1 cc to Special Government Pleader,Sr.No9094

W.P.No.4158 of 2015

bvr(co)
pmk.12.3.2015