IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.22357 of 2002

Kumar Industries
E-56, Developed Plot Estates
Thiruvakkudi
Trichy [Petitioner]

Vs

The Deputy Commercial Tax Officer
Tiruverumbur Assessment Circle
Trichy [Respondent]

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records in CST No.239670/98-99 dated 2.9.2000 on the files of the respondent and quash the same as illegal and direct the respondent and forbearing the respondent from proceeding against the petitioner.

For petitioner : Mr.A.Thiagarajan
For respondent : Mr.S.Manoharan Sundaram, AGP(T)

O R D E R

Heard the learned counsel for the petitioner and Mr.S.Manoharan Sundaram, learned Additional Government Pleader (Taxes) for the respondent.

2. This writ petition has been filed challenging the order of the respondent dated 2.9.2000 and to forbear the respondent from proceeding against the petitioner.

3. The petitioner, being a dealer and manufacturer of boiler components and assessee on the file of the respondent, for the assessment year CST 239670/1998-99, submitted their returns with regard to total and taxable turnover. On 16.08.2000, the respondent issued a notice calling upon the petitioner to file their objections to the proposal of levying penalty under Section 12(3)(C) read with Section 9(2) of the CST Act. Since the petitioner has not filed any objections, the respondent passed the assessment order on 2.9.2000, confirming the proposal and also levied penalty.

4. Since the assessment was made based on the books of accounts, the assessment would fall under Section 12(1) of the TNGST Act for which no penalty can be levied under Section 12(3) of the Act is the submission of the learned counsel for the petitioner.

5. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

6. Having regard to the law laid down by the Hon'ble Supreme Court in the case of State of Madras vs. Jayaraj Nadar & Sons reported in 28 STC 700, it must be held that the assessment made is not a best judgment assessment and hence the penal provision under Section 12(3) of the Act is not attracted and levy of penalty is unwarranted. Therefore, the penalty levied by the assessing authority is not justifiable. Hence, the same is deleted.

The writ petition is ordered accordingly. No costs.

rg

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

The Deputy Commercial Tax Officer
Tiruverumbur Assessment Circle
Trichy

+ 1 cc to M/s.S.Ramesh Kumar, Advocate SR 45607

+ 1 cc to Spl. Govt.Pleader (Taxes) High Court, Madras SR 45706

rsk(co)
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