IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2015

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P.No.14159 of 2002

Tmt.Parvatham

... Petitioner

-Versus-

The Deputy Commercial Tax Officer,
Pollachi (West) Assessment Circle,
Commercial Taxes Buildings,
Pollachi.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Certioari calling for the records relating to the proceedings of the respondent in CST.Asst.No.301236/92-93 dated 28.03.2002 and to quash the above said proceedings as illegal.

For Petitioner : Mr.S.Ramanathan

For Respondent : Mr.S.Manohar Sundaram, AGP (Taxes)

ORDER

Challenging the order passed by the respondent dated 28.03.2002 in CST. ASST.No.301236/92-93 levying penalty following the order of assessment in respect of the assessment year 1992-93, the petitioner, who is the legal heir of the original assessee namely, R.Muthusamy Pillai , has come forward with this writ petition.



2. The case of the petitioner in brief is as follows:- The petitioner is the wife of late R.Muthusamy Pillai, who was a registered dealer and engaged in the business of trading pulses and grams. He was an assessee registered with the respondent under the Tamil Nadu General Sales Tax Act, 1959 and the Central Sales Tax Act, 1956.

3. According to the petitioner, the respondent by his proceedings determined the total and taxable turnover of Rs.23,59,307/- and disallowed the claim of exemption made by the petitioner's husband on the consignment of sales to the extent of Rs.22,99,199.99. Aggrieved by the same, he filed a writ petition in W.P.No.14430 of 1995 and obtained an order of interim stay in his

favour on 19.10.1995. Ultimately, the said writ petition came to be disposed of on 21.07.1999 thereby directing the husband of the petitioner to approach the Appellate Assistant Commissioner (CT) Pollachi. Accordingly, he approached the Appellate Authority by way of appeal and the same ended in dismissal.

4. Thereafter, according to the petitioner, a notice came to be issued on 11.03.2002 stating that her husband was assessed to tax on a total and taxable turnover of Rs.23,59,307/-, but, however, the penalty was omitted to be levied. Hence, the said notice under Section 9(2A) of the CST Act r/w Section 12(3) of the TNGST Act came to be issued by the respondent proposing to levy penalty equal to 1 ½ times of tax due on the consignment sales turnover of Rs.22,99192/- .

5. It is the further case of the petitioner that her husband never suppressed any turnover and his entire books of accounts were accepted, but the claim for exemption made on consignment sales was wrongly disallowed. According to her since the assessment years relates to 1992-93, no such penalty can be levied after 31.03.1998 and no proposal was made in the order of assessment. Without considering the objections, the respondent passed the impugned order imposing penalty. Hence, challenging the illegality of the same, the petitioner has come forward with this writ petition.

6. Heard the learned counsel on eithre side and perused the materials.

7. The learned counsel for the petitioner submitted that the assessment came to be passed under Section 9 of the CST Act r/w 12(2) of the TNGST Act and beyond 31.03.1998 penalty under Section 12(3) of the Act cannot be levied. Further more, when the entire books of accounts had already been accepted by the authority, there cannot be any levy of penalty. In support of his contention, the learned counsel for the petitioner invited the attention of this court to a judgement reported in State of Madras v. Jayaraj Nadar, [28 STC 700] wherein the Hon'ble Supreme Court has held as follows:-

> "Where certain items which are not included in the turnover are discovered from the dealers own account books and the Assessing Authority include these items in the dealers turnover the assessment cannot be regarded as based on the best judgement and penalty cannot be levied in respect of such items."

10. Admittedly, the turnover claiming exemption is culled out from the books of accounts which had been accepted by the officer and hence, there is no justifiable reason for levying penalty. Thus, the impugned order levying penalty is liable to be set aside.

11. In the result, the writ petition is allowed and the impugned order with regard to penalty is set aside. It is open to the assessing authority to recover the entire arrears of tax in accordance with law,if not recover earlier. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kmk

To

The Deputy Commercial Tax Officer, Pollachi (West) Assessment Circle, Commercial Taxes Buildings, Pollachi.

+ 1 cc to Mr.S. Ramanathan, Advocate SR.45578
+ 1 cc to Special Government Pleader Sr.45709

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VD(CO)
EU 28.09.15