IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.27189 of 2015
and
M.P.Nos.1 and 2 of 2015

M/s.H.A.Cader
Rep by its Partner
Mr.Haniff Abdoul Cader Ghaznavy
S/o.Mr.C.M.Chafi
No.40, Labour Donnais,
Pondihcerry - 605 001. .. Petitioner

..Vs..

1.The Commissioner
Commercial Taxes Department,
Puducherry.

2.The Commercial Tax Officer (IW)
Commercial Taxes Department,
Puducherry. .. Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the 2nd respondent in his impugned notices dated 10.04.2013, remainders dated 10.10.2013, 03.11.2014 and 14.07.2015 made in PGST No.302338/CTO-IW/1999-2000 and quash the same.

For Petitioner : Mr.K.V.Subramanian, S.C.,
assisted by Mr.R.Jagadeesan

For Respondents : Mr.M.Govindaraj, G.P.,(Pondy)

ORDER

Heard Mr.K.V.Subramanian, learned Senior counsel assisted by Mr.R.Jagadeesan, learned counsel for the petitioner and Mr.M.Govindaraj, learned Government Pleader (Pondicherry) appearing for the respondents and with the consent of either side, the writ petition is taken up for final disposal.

2.The petitioner who is a registered dealer under the provisions of the erstwhile Pondicherry General Sales Tax Act, 1967 has filed this writ petition challenging the notice dated 10.04.2013. The notice states that during the check of register for collection of tax, it was noticed that the assessment for the year 1999-2000 was completed on 12.01.2001 under the Act, demand notice for Rs.13,56,064/- was raised and issued to the petitioner on 12.01.2001, however, the petitioner had paid the amount only on 25.10.2011 vide challan No.8, after the lapse of 129 months. Thus, the respondent by referring to Section 27(3) of the Pondicherry General Sales Tax Act r/w Section 81 of the Puducherry Value Added Tax Act, 2007 had demanded a sum of Rs.34,98,465/- to be paid within 15 days, failing which recovery action will be initiated against the petitioner. The order of assessment was passed under the erstwhile Pondicherry General Sales Tax Act, 1967 for the assessment year 1999-2000, dated 12.01.2001.

3.The petitioner had put to challenge the order of assessment in W.P.No.2991 of 2001, stating that the notification issued by the Government of Puducherry dated 21.09.1996 levying turn over tax as illegal and void and consequently, the assessment have to be set aside. The writ petition was entertained and an order of interim stay was granted on 16.02.2001, subject to the condition that the petitioner pays 25% of the tax demanded in the impugned assessment order. The writ petition was pending for nearly 11 years before this Court and it was tagged along with another writ petition and writ appeal and heard by the Hon'ble Division Bench of this Court and by judgment dated 14.07.2011, all the three cases were dismissed. Thus, on and after 14.07.2011, the petitioner should have remitted the entire remaining tax amount. However, the petitioner remitted the balance 75% of the tax only on 25.10.2011, after which the respondent had issued the impugned notice, calling upon the petitioner to pay the penalty in terms of Section 27(3) of the Act.

4.The learned Senior Counsel appearing for the petitioner submitted that unless there is willful suppression, the question of levy of penalty will not arise. That apart, there was no such proposal when they issued a notice dated 11.10.2011.

5.The learned Government Pleader (Pondicherry) appearing for the respondent referring to sub-section 3 of Section 27 of the Act submitted that the penalty which is payable under the said provision is compensatory and not penalty for belated payment, as under Section 18 of the Act. Therefore, this being compensatory in nature, the question of exercising discretion does not arise and it is automatic. Further, the issue involved is turn over tax and this tax cannot be passed on to the consumers and has to be borne by the dealer and therefore, the petitioner having retained the amount in their hands from the year 2001 onwards are bound to pay the penalty. In support of his contention, the learned Government Pleader (Pondicherry) referred to the decision of the Hon'ble Supreme Court made in the case of Calcutta Jute Manufacturing Co. vs. Commercial Tax Officer and other reported in (1973) 106 STC 433 (SC).

6.In the light of the above, this Court is not inclined to interfere with the impugned order. However, this court does not propose to foreclose the petitioner's rights, as the petitioner has an effective alternative remedy under the provisions of the Act and the petitioner can file a revision under Section 45 of the Puducherry Value Added Tax Act, 2007.

7.Accordingly, the writ petition is dismissed as not maintainable, leaving it open to the petitioner to file a revision before the Commissioner in terms of Section 45 of the Puducherry Value Added Tax Act, 2007 and if such a revision is filed within a period of 30 days from the date of receipt of a copy of this order, it is open to the revisional authority to consider the revision petition without reference to the limitation. Consequently, connected miscellaneous petitions are closed. No costs.

pgp

Sd/-
Assistant Registrar (CS II)

/TRUE COPY/

Sub-Assistant Registrar

To

1.The Commissioner
Commercial Taxes Department, Puducherry.

2.The Commercial Tax Officer (IW)
Commercial Taxes Department, Puducherry.

+1CC to MR.K.V.SUBRAMANIAN, Advocate SR.NO.38138
+1CC to Govt. Pleader Advocate SR.NO.37889

W.P.No.27189 of 2015
and
M.P.Nos.1 and 2 of 2015

CRS [CO]
MK:29/07/2016