IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 12.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.27888 to 27890 of 2015 &
M.P.Nos.1 to 1 of 2015

Tvl.Hotel Grand International
rep. by its Partner Mr.S.Murugesan
.. Petitioner in all W.Ps.

Vs

The Assistant Commissioner (CT)
Nethaji Road Assessment Circle
C.T.Buildings, Brough Road,
Erode.
.. Respondent in all W.Ps.

Prayer

The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of certiorari to call for the records relating to the proceedings of the respondent in TIN No.33082883906/2012-13; 2013-14 and 2014-15 dated 31.07.2015 and quash the same as illegal, arbitrary and without jurisdiction.

For Petitioner : Mr.K.Soundararajan

For Respondent : Mr.Kanmani Annamalai
Additional Govt. Pleader

C O M M O N O R D E R

Heard Mr.K.Soundararajan, learned Counsel appearing for the petitioner and Mr.Kanmani Annamalai, learned Additional Government Pleader accepting notice on behalf of the respondent and with the consent of learned counsel appearing on either side, these writ petitions are taken up for final disposal.

2.The petitioner who is a registered dealer on the file of the respondent has challenged the orders of assessment passed by the respondent for the assessment years 2012-13, 2013-14 and 201-15, only with regard to the levy of penalty. While completing the assessment, the respondent confirmed the proposal to levy penalty.

3.In the pre-revision notice dated 11.06.2015, there was a proposal to levy penalty under section 27(3) of the TNVAT Act. While submitting the objections, the petitioner pointed out that in as much as the turnover is in their Books of Accounts, the same will not be an escaped turnover liable for assessment and levy of penalty under section 27(3) at 150%. In support of the said contention, the petitioner placed reliance on the decisions of this Court in the Case of CRESCENT AUTO REPAIRS AND SERVICE (g) P.LTD. v. STATE OF TAMIL NADU [69 VST 93]; WESTERN INDIA PLYWOODS LTD., v. STATE OF TAMIL LNADU [64 VST 440], AJEY AND SONS OILS (MADRAS) JP. LTD., v. STATE OF TAMIL NADU [58 VST 290], HAL v. STATE OF TAMILNADU [51 VST 232] and NOKIA INDIA (P) LTD., v. DC 9CT) LTD., [79 VST 137].

4.Though the petitioner has specifically raised such a contention, the respondent while completing the assessment did not deal with the objection, but merely stated that the dealer has deliberately, intentionally and wilfully, filed the incorrect returns.

5.Thus, if the tax has been re-computed, on a perusal of the Books of Accounts, as well as the returns, then as held in the aforementioned decisions, it cannot be termed as a mala fide intention on the part of the dealer. That apart, while confirming the proposal to levy penalty, the Assessing Officer should record a satisfaction that the escape from the assessment is due to wilful non- disclosure so as to levy penalty under section 27(3) of the Act. Mere use of the words deliberate, intentional and wilful is not sufficient, which words have been mentioned in the impugned proceedings.

6.Accordingly, the Writ Petitions are partly allowed and levy of penalty alone is quashed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Rpa

To

The Assistant Commissioner (CT)
Nethaji Road Assessment Circle
C.T.Buildings, Brough Road,
Erode.

+1cc to M/s. K. Soundararajan, Advocate, S.R.No.38616
+1cc to the Government Pleader, S.R.No.38729

RP(CO)
EU(01/08/2016)

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