IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.29768 of 2015
and
M.P.No.1 of 2015

M/s.V3 Automotives Pvt. Ltd.
Rep by its Director
Sri Muthu Palaniappan
No. M-38, West Avenue
Thiruvanmiyur
Chennai – 600 041.
.. Petitioner

..Vs..

The Assistant Commissioner (CT)
Thiruvanmiyur Assessment Circle
Chennai.
.. Respondent

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 respondent in TIN:33570926419/2012-13 and quash the order dated 21.08.2015 passed therein.

For Petitioner : Mr.B.Raveendran

For Respondent : Mr.S.Kanmani Annamalai, A.G.P.,

ORDER

Heard Mr.B.Raveendran, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent and with the consent of either side, the writ petition is taken up for final disposal.

2.The petitioner in this writ petition challenges a proceeding issued by the respondent demanding penal interest under Section 42(3) of the Tamil Nadu Value Added Tax Act, 2006. The petitioner was issued a notice dated 10.06.2015 by the respondent pointing out that on verification of the monthly returns and Annexure-I for the relevant years, namely 2012-13, it is seen that the petitioner has claimed Input Tax Credit after the lapse of the prescribed time limit as per Section 19 (11) of the TNVAT Act. Therefore, the respondent proposed to reverse the Input Tax Credit and collect the same along with the penal interest under Section 42(3) of the TNVAT Act. The petitioner was granted 15 days time to file their objections. However, the petitioner did not file his objections and hence, the authority passed the assessment order and reversed the ineligible Input Tax Credit and issued a notice in Form 'O' along with the assessment order dated 20.07.2015. In the said form, the petitioner has been granted 30 days time to pay the entire tax amount.

3.Admittedly, the petitioner has paid the entire amount well before the 30 days period. It is thereafter a notice has been issued calling upon the petitioner to pay the penal interest under Section 42(3) of the TNVAT Act. Section 42 of the Act deals with payment and recovery of tax, penalty etc., Section 42 (3) states that on any amount remaining unpaid after the date specified for its payment as referred to in sub-section (1) of Section 42 or in the order permitting payment in installments, the dealer or person in addition to the amount due, shall pay interest on such amount for the entire period of default.

4.In the instant case, the order under Section 42(1) of the TNVAT Act came to be passed on 20.07.2015 and along with the order, the notice of assessment of demand in Form 'O' was issued to the petitioner, in which the petitioner was granted 30 days time to pay the tax. The notice also states that if it is not paid, then the petitioner is liable to pay interest under Section 42 of the Act.

5.It is not in dispute that the petitioner has paid the entire tax amount within 30 days period. Therefore, the respondent having granted time of 30 days to comply with the demand and the petitioner having complied with the same and the 30 day period being the date specified for payment, then the question of demanding interest under sub-section (3) of Section 42 would not arise.

6.The learned Additional Government Pleader appearing for the respondent does not dispute the above legal position. In fact, Form 'O' has been issued as mandated under Rule 8(6) of the TNVAT Rules.

7.In the light of the above, the impugned demand of penal interest is not sustainable in law. Accordingly, the writ petition is allowed and the impugned demand is quashed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT)
Thiruvanmiyur Assessment Circle
Chennai.

+1cc to Mr.B.Raveendran, Advocate Sr.47284

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ctk[co]
srg 14/09/2016