IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2016

C O R A M

THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.202 of 2016 and
W.M.P.No.107 of 2016

Sri Ram Electricals
[represented by its Proprietor R.Srinivasan]
152/220 Choolaimedu High Road,
Chennai 600 094. ... Petitioner

Vs

The Assistant Commissioner (CT),
Vadapalani II Assessment Circle,
Chennai - 600 024. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records on the files of the Respondent herein in TIN:33961481869/2008-09, dated 04.03.2013 and quash the same to the extent of penalty imposed under Section 27 of the Tamil Nadu Value Added Tax Act, 2006.

For petitioner ... Mr.K.A.Parthasarathy
For Mr.N.Inbarajan

For respondent ... Mr.S.Kanmani Annamalai
Additional Government Pleader

ORDER

The petitioner is a proprietary concern and the challenge in this writ petition is to an order of assessment only with regard to the imposition of penalty under Section 27 of the Tamil Nadu Value Added Tax Act, 2007, by imposing penalty at 150%, being Rs.17,19,443/-.

2.The petitioner, who is a dealer in civil and electrical works contract, is a registered under the provisions of the Tamil Nadu Value Added Tax Act, 2007 on the file of the respondent. The officials of the Enforcement Wing inspected the place of business on 27.07.2010 and during inspection, it was noticed that the petitioner filed monthly return in Form 'L' and have effected interstate purchases of electrical goods and used for works contract. The balance sheets for 2008-2009 was verified and found that the dealer has made sale of fixed assets (car) for Rs.5,00,000/-. However, they have not paid tax on the sale of fixed assets. Therefore, it was proposed that the sale of fixed asset is liable to tax at 4% which works out to Rs.20,000/-. This was accepted by the petitioner and tax was paid. With these facts, a notice was issued proposing to revise the assessment for 2008-2009 and the petitioner was afforded an opportunity to submit his objections. In the said notice, there was also a proposal to levy penalty under Section 27 of the Act. Though the petitioner received the notice, he failed to submit his objections and the Assessing Authority proceeded to revise the assessment and passed the impugned order. After giving credit to the TDS adjustment, a sum of Rs.1146295.00 has been demanded as the tax. The petitioner has not challenged the order of assessment in so far as the tax due and he has paid the entire amount. So far as the penalty, the petitioner is aggrieved. The impugned order states that the penalty is levied at 150%.

3.It is the settled legal position that merely on account of default in payment of tax would not attract levy of penalty under Section 27 that too at 150%. What is to be established is that the dealer wilfully and deliberately failed to remit the tax. This view is supported by several decisions and some of which are: (i) 58 VST 370 (Mad.) (Lakshmi Trade Credits Ltd., Vs. State of Tamil Nadu); (ii) 41 STC 375 (State of Tamil Nadu Vs. SKM Ayya Nadar & Co.,); (iii) 44 STC 299 (Mad.) (State of Tamil Nadu Vs. S.M.Baba Sahib); and (iv) 44 STC 300 (State of Tamil Nadu Vs. Estate of V.U.Panneer Nadar by P.Parameswari (wife)].

4.That apart, the Assessing Officer has not given any reasons as to why the penalty at 150% has to be levied. It may be true that the petitioner did not submit his objections and the Assessing Officer proceeded ex parte but that does not mean that the order can be devoid of reasons. The penalty being leviable only for deliberate default and wilful suppression of the income etc. The authority should have recorded a reason that the dealer was liable to be penalised and penalty has to be levied on the dealer that too on 150%, this having not been done, to that extent, the impugned order levying penalty at 150% has to be held not in accordance with the settled legal position.

5.Accordingly, the Writ Petition is allowed and the penalty imposed on the petitioner by virtue of the impugned order stands set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar(CSVI)

True Copy

Sub-Assistant Registrar

sgl
To
The Assistant Commissioner (CT),
Vadapalani II Assessment Circle,
Chennai - 600 024.

+1 cc to Mr.N.Inbarajan Advocate sr.29434
+1 cc to Government Pleader sr.29563

W.P.No.202 of 2016

nm(co)
aa13/06/2016