IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.Nos.34331 of 2015
and
M.P.Nos.1 & 2 of 2015

M/s.K.P.Jothi Traders,
Rep by its Proprietor J.Mahadevan,
42, Othavadai Chetty Street,
Vandavasi 604 408,
Tiruvannamalai District. ... Petitioner

Vs

The Commercial Tax Officer,
Vandavasi,
Tiruvannamalai District. ... Respondent

Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records on the file of the respondent in impugned proceedings made in TIN No.33334602172/2014-2015 dated 25.09.2015 in so far as levying penalty u/s 27[3][c] TNVAT Act, 2006 is concerned quash the same.

For Petitioner : Ms.R.Hemalatha

For Respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader

O R D E R

Heard Ms.R.Hemalatha, learned counsel appearing for the petitioner; Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent and with the consent on either side, the writ petition is taken up for disposal.

2. The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax, 2006 [hereinafter referred to as "the Act"]. In this Writ Petition, the petitioner has challenged the order passed by the respondent levying penalty under Section 27[3] [c] of the Act. The undisputed fact is that pursuant to a

search made in the departmental website, the respondent issued a notice dated 30.07.2015 stating that the petitioner has suppressed certain purchases. Immediately on receipt of the notice, the petitioner approached the respondent and stated that they have wrongly filed a bill and accepted their mistake and paid the tax. They also requested that penalty may be dropped. However, the respondent by impugned proceedings, determined to the best of judgment under Section 27[1] of the Act while quantifying the tax and accepting that the tax was fully paid, levied penalty at the rate of 100% of the tax. The power to impose penalty by the respondent is traceable to Section 27[3] of the Act as the said power can be invoked only when the Assessing Officer finds that the assessee has willfully failed to disclose the assessable turnover.

3. In the instant case, the assessee accepted the mistake as soon as the show cause notice has been issued and paid the tax. In such circumstances, it cannot be stated that there is a willful non-disclosure of the assessable tax by the petitioner, since the assessment itself has been done only by the impugned order i.e., after the payment of tax by the petitioner. That apart, the respondent has not specifically recorded as to how, he was satisfied that the conduct of the assessee, amount to willful non-disclosure of the turnover. Thus, the impugned order passed by the respondent warrants for interference.

4. Accordingly, the Writ Petition is allowed and the impugned order passed by the respondent in TIN No.33334602172/2014-2015 dated 25.09.2015 is hereby quashed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gya

To

The Commercial Tax Officer,
Vandavasi,
Tiruvannamalai District.

+1cc to Ms.R.Hemalatha, Advocate, S.R.No.50950
+1cc to the Special Government Pleader(T), S.R.No.51180

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MP.Nos.1 & 2 of 2015

RJ(CO)
CA(21/09/2016)