IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.34848 to 34853 of 2015
&
M.P.Nos.1&2 of 2015 (12 Nos)

M/s.Effel Exports Private Limited,
Rep., by its Director -
P.Hafeez Ahmed,
No.64/27, Flat No.5, 1st Floor,
Sydenhams Road,
Periamet,
Chennai - 600 003. .. Petitioner in all WP's

Versus

The Commercial Tax Officer,
Vepery Assessment Circle,
No.10, 3rd Floor, Greams Road,
Chennai - 600 006. .. Respondent in all WP's

Prayer: Writ Petitions are filed under Article 226 of the Constitution of India, seeking for Writ of Certiorari to call for the records on the file of the respondent in his proceedings made in TIN:33850523812/2008-09, 2009-10, 2010-11, 2011-12, 2012-13, & 2013-14 respectively dated 28.09.2015, in so far as levying penalty under Section 27(3) TNVAT Act, 2006 is concerned quash the same and pass such further or other orders.

In all W.Ps.

For Petitioner : Mr.S.Rajasekar

For Respondents : Mr.K.Venkatesh G.A (Taxes)

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COMMON ORDER

Since the issue involved in these Writ Petitions are identical in nature, these Writ Petitions are taken up together, and disposed of by this common order.

2. Heard Mr.S.Rajasekar, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for respondents. With the consent of the learned counsels appearing on either side, the Writ Petitions are taken up for final disposal.

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3. The Writ Petitions have been filed by the petitioner challenging the orders of assessment. The petitioner is a registered dealer on the file of the respondent, under the provisions of Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act). The place of business of the petitioner was inspected by the Officials of the Enforcement Wing on 31.07.2014, and they filed a report, pointing out various defects for the assessment years 2008-09, 2009-10, 2010-11, 2011-12, 2012-13 & 2013-14. The petitioner filed their objections and so far as the assessments for the year 2008-09, 2012-13 & 2013-14 are concerned, the explanation was accepted, and the tax was remitted. However, the respondent has levied penalty under Section 27(3) of the TNVAT Act. This is challenged in W.P.Nos.34848, 34852 & 34853 of 2015.

4. With regard to the remaining assessment years, namely, 2009-10, 2010-11 and 2011-12, the tax has been imposed only on the ground that the petitioner was not able to produce Form-H. It is settled legal position that as and when these forms are available, it is always open to the petitioner/assessee to file an appropriate application before the Assessing Officer for rectification. However, it is seen that in the assessment orders, penalty has been levied on the other heads, namely, the deemed sale value of purchase omission, sales suppression noticed, etc., However, the tax due on these heads has fully been settled. However, no penalty has been levied on the sale. So far as the Form-H is concerned, the petitioner can procure the same and file appropriate application before the Assessing Officer, seeking for revising the returns. Therefore, this Court is inclined to grant liberty to the petitioner to produce the Form-H, within a time frame for the assessment years 2009-10, 2010-11 and 2011-12. Accordingly, the petitioner is directed to produce the Form-H before the Assessing Officer, within a period of three months from the date of receipt of a copy of this order, failing which, the petitioner should remit the amount of tax demanded under the said head, for which, the respondent shall initiate action in accordance with law.

5. So far as the imposition of penalty is concerned relevant to the assessment years namely, 2008-09, 2012-13 and 2013-14, a plain reading of Section 27(3) of the TNVAT Act, shows that the Assessing Authority must be satisfied that the escape from assessment is due to willful non-disclosure of assessable turnover by the dealer. Though the matter came to light pursuant to an inspection conducted, in the impugned order there is no specific finding rendered by the authority as to the conduct of the petitioner and that the escapement of assessment is due to willful non-disclosure.

6. Thus, in the light of the fact that there is no such specific finding of the Assessing Officer, the imposition of penalty on the petitioner calls for interference. Accordingly, W.P.Nos.34849, 34850 & 34851 of 2015 pertaining

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to the assessment years, 2009-10, 2010-11, 2011-12, are disposed of, by granting the petitioner three months time to produce the Form-H. The petitioner is directed to produce the Form-H before the Assessing Officer, within a period of three months from the date of receipt of a copy of this order, failing which the petitioner should remit the amount of tax demanded under the said head, failing which the respondent shall initiate action in accordance with law.

7. So far as the levy of penalty for the assessment years 2008-09, 2012-13 & 2013-14, is concerned, in the light of the above discussion, the same are set aside and the Writ Petitions in W.P.Nos.34848, 34852 & 34853 of 2015 are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

pbn

To

The Commercial Tax Officer,
Vepery Assessment Circle,
No.10, 3rd Floor, Greams Road,
Chennai - 600 006.

+1cc to the Government Pleader, S.R.No.51884

SAI(CO)
EU(18/10/2016)

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