IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.30064 of 2016 &
WMP No.26052 of 2016

Tvl.Reddy Constructions
rep by its Proprietor
Mr.J.Pradap Reddy .. Petitioner

-Vs-

The Assistant Commissioner (CT)
MMDA Colony Assessment Circle
No.10, Palaniappa Building
Greams Road, Chennai 6. .. Respondent

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the respondent notice in TIN No.33606337887/2015-16 dated 16.6.2016 and quash the same as illegal and arbitrary.

For Petitioner : Mr.M.Desingu

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.M.Desinghu, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate Counsel appearing for respondent. With the consent of the learned counsel appearing on either side, the Writ Petition is disposed of for final disposal.

2.The petitioner has come forward with this Writ Petition challenging the notice issued by the respondent dated 16.06.2016, imposing penalty on the petitioner for the assessment year 2015-16.

3.The petitioner is a Civil Works Contractor and a registered dealer on the file of the respondent under the provisions of Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act]. A surprise inspection was conducted in the place of business of the petitioner on 25.08.2015, by the Enforcement Wing Officials, during which, it is stated that there are certain defects. Based on the inspection report, the respondent issued a notice dated 16.1.2016, stating that the petitioner has executed construction agreement dated 29.05.2015, as the Land owner cum builder between Mr.Pratap Reddy and P.Sundaram and the Department was informed that they constructed a building for Rs.42,17,000/-, the deemed sale value and tax amounts payable by the petitioner were worked out. Thus, there was a proposal to levy tax at Rs.2,59,767/-, and impose a penalty of Rs.3,89,651/-, under section 27(3) of the TNVAT Act.

4.Since the petitioner did not submit their objections within the time permitted, the respondent has completed the assessment and passed the order dated 28.3.2016, in which the respondent has demanded only tax and dropped the penalty proposal, since it was an assessment under section 25 of the TNVAT Act. Thus, the petitioner was due and liable to pay only the balance amount of Rs.1,72,503/-. Subsequently, the respondent by notice dated 16.6.2016, has directed the petitioner to pay the said amount of Rs.1,72,503/-, as penalty.

5.However, from the assessment order dated 28.3.2016, it is clear that no penalty was imposed and the amount of Rs.1,72,503/- was a balance amountof tax payable. Pursuant to the interim order granted by this Court on 30.08.2016, the petitioner has remitted a sum of Rs.1,72,503/-, by way of Demand Draft on 19.09.2016.

6.In the light of the above, as the balance amount of tax has already been paid, there is no question of once again demanding a sum of Rs.1,72,503/- as penalty, which was not levied and therefore, is unsustainable.

7.For the above reasons, the Writ Petition is allowed and the impugned order is quashed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

RPA

To

The Assistant Commissioner (CT)
MMDA Colony Assessment Circle
No.10, Palaniappa Building
Greams Road, Chennai 6.

+1cc to Mr.M. Desingu, Advocate, S.R.No.59944
+1cc to the Government Pleader, S.R.No.60551

RJ(CO)
EU(17/11/2016)

W.P.No. 30064 of 2016