IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 28.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.34219 of 2016

&

W.M.P.No.29525 of 2016

Vibgyor paints and Chemicals Pondicherry
Plot No.S-51, Phase-III,
Sipcot Industrial Complex
Nellikuppam village, Ranipet-632 405
rep by its partner ... Petitioner

Vs

The Assistant Commissioner (CT) (FAC)
Ranipet (Sipcot) Assessment Circle
Ranipet-Sipcot ... Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of the respondent in CST 894119/2013-14 dated 12.08.2016 and quash the same to the extent of penalyt imposed under Section 27(3) of the TNVAT Act 2006 as the same is prima facie opposed to the provisions of TNVAT Act, 2006 and contrary to the settled law.

For Petitioner : Mr.Md.Ghafoor ur Rahman

For Respondent : Mr.S.Kanmani Annamalai, AGP

O R D E R

Heard Mr.Md.Ghafoor Ur Rahman, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepting notice on behalf of the respondent.

2. With the consent on either side, the writ petition itself is taken up for disposal.

3. The petitioner who is a registered dealer on the file of the respondent under the provisions of Tamil nadu Value Added Tax, 2006 (TNVAT Act) and Central Sales Tax Act, 1956 has filed this writ petition challenging the levy of penalty u/s. 27(3) of TNVAT Act.

4. The undisputed facts are the place of business of the petitioner was inspected by the enforcement wing on three days on 15.04.2016, 16.04.2016 and 18.04.2016 and certain defects pertaining to sales suppression etc., were pointed out. However, even before the assessment officer could issue any notice proposing to revise the assessment the petitioner paid the entire tax and an amount of Rs.2,000/- was collected as compounding fee for certain other defects apart from that a sum of Rs.10,000/- was collected as penalty. After realizing all these amounts the respondent issued a notice proposing to levy penalty u/s. 27(3) of the TNVAT Act. Petitioner submitted their objections stating that at the time of inspection they have paid the difference in tax and the reported turnover will not attract levy of tax again and hence question of levying penalty does not arise. After extracting the objections, the respondent over ruled the same stating that at the time of inspection the petitioner has accepted the finding of the enforcement wing.

5. In the considered view of this Court, while considering the objections filed by the dealer the respondent cannot reject the same solely for the reason that the dealer accepted certain defects before the enforcement wing. The settled legal position is that for levy of penalty u/s. 27(3) it has to be established that the dealer willfully and deliberately failed to remit tax and this has been held so in the following decisions of this Court in (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). That apart, the assessing officer has not given any reason as to why penalty of 150% has to be levied nor there is any consideration of the objections filed by the dealer in a proper perspective. That apart, already the at the time of inspection Rs.10,000/- has been collected as penalty. Thus considering the conduct of the dealer in remitting the entire tax much prior to even the assessing officer issuing notice, this is not a case where the provisions of Section 27(3) would stand attracted as the petitioner's conduct cannot be treated as deliberate default and willful suppression.

For the above reasons, the writ petition is allowed and the impugned order is quashed. No costs. Connected miscellaneous petition is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

The Assistant Commissioner (CT) (FAC)
Ranipet (Sipcot) Assessment Circle
Ranipet-Sipcot

+1 CC to Mr. MD.Ghafoorur Rahman, Advocate Sr.No.56185
+1 CC to the Spl. Govt., Pleader,(Taxes) Sr.NO.58648

W.P.No.34219 of 2016

CP (CO)
MD : 22/10/2016