IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.35019 and 35020 of 2016
and
W.M.P.Nos.30191 to 30194 of 2016

M/s.Saravana Super Market
Rep. By its Proprietor - P.Selvam,
No.26, Otthavadai Chetty Street,
Theyaradi,
Vandawasi - 604 408,
Tiruvannamalai District. .. Petitioner in W.P.No.35019 of 2016

M/s.Saravana Stores (Defunct),
Rep. By its Proprietor - P.Saravanan,
No.2, Acharapakkam Road,
Vandawasi - 604 408,
Tiruvannamalai District. .. Petitioner in W.P.No.35020 of 2016

Vs

The Commercial Tax Officer,
Vandawasi,
Tiruvannamalai District. .. Respondent in both W.Ps.

Prayer in W.P.No.35019 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the file of the respondent in its impugned proceedings made in TIN No.33604602266/2015-16 dated 15.09.2016, quash the same.

Prayer in W.P.No.35019 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the file of the respondent in its impugned proceedings made in TIN No.33534600510/2015-16 dated 21.07.2016, quash the same.

For Petitioner
in both W.Ps. : Ms.R.Hemalatha
For Respondent
in both W.Ps. : Mr.K.Venkatesah
Government Advocate

COMMON ORDER

Heard M/s.Hemalatha, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent. With the consent of either side, the writ petition is taken up for disposal.

2.In these writ petitions, the petitioner has challenged the orders of assessment only with regard to the imposition of penalty and equal time addition on the ground that but for the surprise inspection, the suppression would not have come to light. The penalty has been imposed under Section 27(3) of the Tamil Nadu Value Added Tax Act (TNVAT Act). In terms of the said provision to levy penalty the Assessing Officer should record his satisfaction that escapement of tax was due to willful non-disclosure. Mere non-disclosure does not automatically lead to levy of penalty. The statute contemplates levy of penalty in cases of willful non-disclosure. Therefore, the petitioner's conduct in paying the tax at the time of inspection prior to issuance of show cause notice can be taken into consideration. Similarly also with regard to equal time addition. Therefore, this Court is of the view that assessment should be re-done on these two heads.

3.Accordingly, the writ petitions are allowed, the impugned orders are set aside and the matter is remanded to the respondent for fresh consideration who shall take note of the conduct of the petitioner in remitting tax even prior to the issuance of show cause notice dated 18.08.2016 and 31.05.2016 respectively and consider both the issues regarding the levy of penalty as well as the equal time addition and pass fresh orders in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cse

To

The Commercial Tax Officer,
Vandawasi,
Tiruvannamalai District.

+1cc to Mr.R. Hemalatha, Advocate, S.R.No.70809

rj(CO)
md(29/12/2016)

W.P.Nos.35019 and 35020 of 2016
andW.M.P.Nos.30191 to 30194 of 2016