IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 15.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.13779 of 2003
&
W.P.M.P.No.17243 of 2003

Sri Balaji Traders,
No.249, C.G.Street, Mundi,
Vaniyambadi. ... Petitioner

Versus

1. The Tamil Nadu Sales Tax Appellate Tribunal
   (Additional Bench), Chennai,
   Rep. by the Secretary,
   City Civil Court Buildings,
   Chennai-600 104.

2. The State of Tamil Nadu rep. by
   The Deputy Commissioner (CT),
   Vellore.

3. The Appellate Assistant Commissioner (CT),
   Vellore.

4. The Commercial Tax Officer,
   Vaniyambadi Assessment Circle,
   Vaniyambadi. ... Respondents

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 first respondent in S.T.A.No.1366/2000, quash the order dated 05.12.2002 made therein and further restore the order of the third respondent in A.P.No.1018/97(CST), dated 12.08.1999.

For Petitioner : Mr.S.Raveekumar

For Respondents : Mr.K.Venkatesh
Government Advocate (Taxes)

O R D E R

Heard Mr.S.Raveekumar, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate (Taxes), appearing for the respondents.

2. The learned counsel on either side submitted that since the issue is covered by the decision of the Hon'ble Division Bench of this Court in the case of Tvl.Shyam Air Fridge Vs. The Deputy Commissioner [Tax Case (Revision) No.186 of 2009, dated 28.07.2006] and this Writ Petition can be disposed of, by following the said decision. The point, that arose for consideration in the said decision is, as to whether the order of the Tribunal, confirming the orders of the Assessing Authority, while reversing the order of Appellate Assistant Commissioner, with regard to levy of penalty under Section 12(3)(b) of the Tamil Nadu General Sales Tax Act, 1959 is justified.

3. The circumstances in which the penalty is leviable was considered in several decisions and one of the such decisions is being India Industries Vs. State of Tamil Nadu reported in 2014 69 VST 139 (Madras), wherein, it was held as follows:-

> In India Industries V. State of Tamil Nadu reported in 2014 (69) VST 139 (Mad)., this Court considered a question, as to whether, levy of penalty under Section 12(3)(b) of the Tamil Nadu General Sales Tax Act, 1959, was justifiable, particularly, when there was no suppression pointed out by the Revenue that the claim of the assessee related only to concessional rate of tax. This Court held as follows:-
>
> > 8..... Thus when the turnover assessed under the assessment order is drawn from the books of accounts itself, and there being no reference to any specific concealment of the turnover in the accounts, the question of invoking Section 12(3)(b) of the Tamil Nadu General Sales Tax Act, 1959 would not arise. The Explanation to Section 12(3)(b) of the Act specifies the turnover which merited to be excluded for the purpose of levy of penalty, one such being the turnover representing addition related to book turnover itself. Thus, even while calculating the turnover for the purpose of levy of penalty, the turnover, which are already available in the books of accounts are to be excluded and only those turnover which are estimated having reference to a specific concealment alone, the purpose of addition, invite the penal provision under the Tamil Nadu General Sales Tax, 1959. In the decision reported in (2002) 125 STC 505 (Mad) (Appolo Saline Pharmaceuticals (P) Limited V. Commercial Tax Officer (FAC) this Court pointed out

that when the assessment is based on the accounts turnover, the question of levy of penalty does not arise."

4. The above referred decision, viz., India Industries's case was referred to in a recent decision of the Hon'ble Division Bench of this Court in Tvl.Shyam Air Fridge's case, referred to supra.

5. In the instant case, as could be seen from the order of Assessment, the Assessment was completed after referring to the books of accounts, stock register etc., If the law laid down by the Hon'ble Division Bench of this Court, in the Tvl.Shyam Air Fridge's case, referred to supra is applied to the facts of the case on hand, it is clear that the question of levying penalty under Section 12(3)(b) of the TNGST Act, does not arise.

6. Accordingly, the Writ Petition is allowed and the order passed by the first respondent is set-aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

r n s
To

1. The Secretary,
Tamil Nadu Sales Tax Appellate Tribunal
(Additional Bench), Chennai,
City Civil Court Buildings,
Chennai-600 104.

2. The Deputy Commissioner (CT),
State of Tamil Nadu, Vellore.

3. The Appellate Assistant Commissioner (CT),
Vellore.

4. The Commercial Tax Officer,
Vaniyambadi Assessment Circle,
Vaniyambadi.

+1cc to the Special Government Pleader(T), S.R.No.52415

W.P.No.13779 of 2003 &
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LRS(CO)
CA(29/09/2016)