IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 15.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.37447 of 2003

M/s FAMTEX EXPORTS (P) LTD.,
No.15, A, Numgambakkam
Chennai-34 [PETITIONER]

Vs

1 The Tamil Nadu Sales Tax Appellate Tribunal (AB)
Chennai 108.

2. The Commercial Tax Officer
Valluvarkottam Asst. Circle
Chennai. [RESPONDENTS]

Prayer: The 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 STA No.1327 of 2001 dated 11.07.2003 and to quash the impugned proceedings dated 11.07.2003 as illegal and ultravires to the facts and circumstances of the case.

For Petitioner : Ms.C.Rekha Kumari
For Respondents: Mr. Manokaran Sundaram AGP (Taxes)

O R D E R

Heard Ms.C.Rekha Kumari, learned counsel appearing for the petitioner.

2.This Writ Petition has been filed by the petitioner challenging the order passed by the first respondent dated 11.07.2003, by which the first respondent interfered with the order passed by the second respondent and directed penalty to be paid at 100% instead of 150%.

3.So far as levy of penalty is concerned, the Hon'ble Full Bench of this Court in the case of C.S.PARTHASARATHY CHETTY v. STATE OF TAMIL NADU [(2006) 148 STC 256 (Mad) (FB)], held that in the absence of mens rea, resort to penal provision would not be proper unless it is established that the conduct of the dealer was contumacious or that there was deliberate violation of the statutory provision or wilful disregard thereof.

4.Therefore, the first respondent while passing the impugned order ought to have given a specific finding that there was a mens rea on the part of the dealer. However, this has not been done by the Regional Authority. Considering the said fact, the Appellate Assistant Commissioner rightly allowed the appeal and the said Appeal has been erroneously reversed by the first respondent.

5.In the light of the Hon'ble Full Bench decision of this Court, referred supra, the levy of penalty at 100% on the petitioner in the impugned order calls for interference.

6.Accordingly, the Writ Petition is allowed and the impugned order is quashed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Rpa

To

1 The Tamil Nadu Sales Tax Appellate Tribunal (AB)
Chennai 108.

2. The Commercial Tax Officer
Valluvarkottam Asst. Circle
Chennai.

+1cc to M/s. C. Rakhakumari, Advocate, S.R.No.33198
+1cc to the Government Pleader, S.R.No.33333

NRJK(CO)
EU(28/06/2016)