IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.8744 of 2017
and
W.M.P.No.9593 of 2017

Spahi Projects Pvt. Ltd.,
Rep. By its Director,
Jhaver Centre, 3rd Floor, Rajah Annamalai Buildings,
No.72, Marshalls Road, Egmore,
Chennai-600 008. ...Petitioner

Vs.

The Assistant Commissioner (CT) (FAC)
Egmore Assessment Circle,
No.88, Mayor Ramanathan Salai,
Chennai-600 031. ...Respondent

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records of the respondent in TIN:33140442480/2013-14 dated 28.02.2017 and quash the same to the extent of penalty of Rs.1,01,610/- 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 decisions of this Court.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Mr.R.Venkatesh, learned Government Advocate, takes notice for the respondent. By consent of the parties, the main writ petition itself is taken up for final disposal at the admission stage.

2. The petitioner is aggrieved against the order of assessment dated 28.02.2017, only insofar as the imposition of penalty under Section 27(3) of the Tamil Nadu Value Added Tax Act, 2006.

3. Heard both sides.

4. The petitioner is an assessee under the respondent and an order of assessment came to be passed in respect of assessment year 2013-2014, imposing tax liability of Rs.2,37,842/- and penalty of Rs.1,01,610/- being 150% of the balance tax liability after adjusting input tax credit of Rs.1,70,102/-. The petitioner is not aggrieved against the imposition of such tax, and infact the petitioner has paid the balance tax amount of Rs.67,740/- after adjustment of Input tax credit and thus there is a nil balance of tax liability. However, the present writ petition is filed only against the imposition of penalty. The contention of the petitioner as against such imposition of penalty is as follows:-

(a) When a notice of proposal was sent on 16.12.2016, the respondent has not stated as to why such penalty is sought to be imposed on the petitioner except by stating a single line observation that penalty as per the provisions under the Tamil Nadu Value Added Tax Act, 2006 is proposed.

(b) Even while passing the order of assessment, the respondent has not stated the reasons as to how the penalty under Section 27(3) of the TNVAT Act, 2006 at the rate of 150% is payable by the petitioner, except by making a single line observation that the suppression is 100%.

(c) In any event, the petitioner was not given an opportunity of personal hearing before passing the order of assessment.

5. The learned Government Advocate appearing for the respondent submitted that the objections filed by the petitioner were considered and the Assessing Officer has given findings on those objections and thereafter came to the conclusion for imposing the tax and penalty. Therefore, he submitted that the petitioner is not entitled to question the penalty.

6. It is no doubt, true that the Assessing Authority is a competent to decide as to whether the petitioner is liable to pay penalty under the relevant provisions of the above said Act or not. But at the same time, it has to be noted that the Assessing Officer is duty bound to express the reasons in writing for the proposed imposition of such penalty in the notice of proposal and justifications of confirming such proposal in the order of assessment. As already pointed out supra, such expressions are totally absent both in the notice of proposal as well as in the final order of assessment. Needless to say, mere stating that there is a suppression of 100% is not enough to meet out the requirements to impose the penalty, without stating as to how it is a suppression.

7. According to the learned counsel appearing for the petitioner, there is no necessity for imposing penalty, as there is no suppression at all.

8. This Court, at this stage, is not inclined to go into such contention raised by the petitioner and give any finding on the same, since this Court is satisfied that the matter needs to be remitted back to the Assessing Officer to consider the issue once again on merits and in accordance with law, after hearing the petitioner in person. It is an admitted fact that the petitioner was not given any personal hearing, as seen from the impugned order of assessment itself.

9. Accordingly this writ petition is allowed and the impugned order of assessment is set aside and the matter is remitted back to the respondent for re-considering the issue of penalty and pass fresh order, after hearing the petitioner in person as well. Such exercise shall be done by the respondent within a period of six weeks from the date of receipt of a copy of this order. It is open to the

petitioner to raise additional objections, if any, before the respondent within two weeks from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

The Assistant Commissioner (CT) (FAC)
Egmore Assessment Circle,
No.88, Mayor Ramanathan Salai,
Chennai-600 031.

+1cc to Special Government Pleader SR.No.22345

+1cc to Mr.P.Rajkumar, Advocate SR.No.22074

W.P.No.8744 of 2017

SDR 24.04.2017