IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.8941 of 2017 &
W.M.P.No.9857 of 2017

Mrs.Kalpana Murji Patel,
W/o.Late Murji Punja Patel,
Flat No.4A, 4th Floor,
80/92, Puraswalkam High Road,
Kellys, Chennai - 600 010. ... Petitioner

Vs.

The Deputy Commercial Tax Officer,
Anna Salai Assessment Circle,
4th Floor, PAPJM Building Annexe,
Greams Road, Chennai - 600 006. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records of the Urgent Notice of the respondent in TIN 33050620379/2013-14 dated 01.03.2017 and quash the same.

For Petitioner : Mr.C.K.M.Appaji

For Respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader.

O R D E R

Heard Mr.C.K.M.Appaji, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent. With the consent on either side, the writ petition itself is taken up for final disposal.

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2.The petitioner, who is the wife of Late Murji Punja Patel, has filed this writ petition challenging a demand notice dated 01.03.2017, directing the petitioner to pay a sum of Rs.2,13,161/-, being the arrears of value added tax, which was payable by her late husband, who was running a proprietorship under the name and style of M/s.Bombay Stationers.

3.In the impugned notice, the respondent has admitted that the petitioner has paid the tax, but has not paid the penalty Rs.2,13,161/-. The assessment pertains to

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the year 2013-14 and the petitioner's husband passed away on 08.04.2016. On receipt of the earlier notice, dated 20.12.2016, the petitioner submitted a detailed representation to the respondent and while doing so, she remitted the entire tax amount of Rs.1,42,107/-, by means of a cheque. She also stated that her husband died on 08.04.2016 and left behind herself and two minor children and she is in great financial difficulty and she does not have any money to pay the penalty. Further, she pointed out that there has been a violation of principles of natural justice and the respondent has got sufficient discretion to drop the penalty proceedings. Along with the representation, copy of the death certificate and a cheque for Rs.1,41,107/- were enclosed. The Department has encashed the cheque, but curiously enough, the respondent has addressed the letter to M/s.Bombay Stationers, though they were fully aware that the proprietor is no more and it is the petitioner, who has made the payment of tax. Thus, it is evidently clear that there has been gross violation of principles of natural justice. It is not clear as to how the penalty had been imposed and whether the respondent had brought out any willful act on the part of the dealer in not remitting the tax at the appropriate time. Thus, in the absence of any willfulness in non-payment of tax or deliberate suppression of the turn over, the provisions of the act do not empower the Assessing Officer to impose penalty.

4.Thus, taking into consideration the peculiar facts and circumstances of the case, this Court is inclined to interfere with the impugned proceedings. Accordingly, this writ petition is allowed, the impugned notice is quashed and consequently, the levy of penalty is set aside and the respondent is restrained from demanding any further amounts from the petitioner in respect of the business carried on by her late husband under the name and style of M/s.Bombay Stationers. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

abr/pbn

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To

The Deputy Commercial Tax Officer,
Anna Salai Assessment Circle,
4th Floor, PAPJM Building Annexe,
Greams Road, Chennai - 600 006.

+ 1 cc to M/s.C.K.M.Appaji, Advocate,SR.49904
+ 1 cc to The Govt.Pleader, SR.49445

W.P.No.8941 of 2017

NR 08/08/2017

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