IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P No.12664 of 2017
and
W.M.P.Nos.13493 & 13494 of 2017

M/s.Sri Kumaran Redymades
Rep. By its Proprietrix-S.Amudha
No.6, Loganathan Street
Cheyyar, Thiruvannamalai District ... Petitioner

Vs

The Deputy Commercial Tax Officer
Vandavasi
Thiruvannamalai District
... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari calling call for the records on the file of the respondent in his impugned proceedings made in TIN: 33784601682/ 2015-2016 dated 4.5.2017 in so far as it levied penalty alone is concerned and quash the same.

For Petitioner : Ms.R.Hemalatha

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Ms.R.Hemalatha, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing on behalf of the respondent/ Department. With consent of the learned counsel on either side, the writ petition itself is taken up for final disposal.

2.The petitioner who is a registered dealer on the file of the respondent under the provisions of Tamil Nadu Value Added Tax Act, 2006 is before this Court challenging the levy of penalty under Section 27(3) (c) of the Act.

3.The petitioner had filed the Form I returns for the assessment year 2015-16 and deemed assessment has been made by the respondent under Section 22(2) of the Act. Subsequently, on verification of the department website report, the respondent issued notice dated 10.03.2017 alleging that there is a mismatch from the purchase details of other dealers with the purchase details furnished by the petitioner.

4.The petitioner submitted their objections dated 22.03.2017 by stating that wherever there was omission, the same was accepted and the petitioner was ready to pay tax due for the said omission. However, in the assessment order, on the entire tax liability on account of omission, Rs.50,469/- was assessed as actual sales suppression, for which penalty @ 150% was lievied under Section 27(3)(c) of the Act.

5.Admittedly the said provision states that in making an assessment in Clause (a) of Sub Section 1 of Section 27 of the Act, the Assessing Authority may, if it is satisfied that the escape from the assessment is due to willful non-disclosure assessable turnover by the dealer, direct the dealer, to pay, in addition to the tax assessed under Clause (a) of Sub Section 1 of Section 27 by way of penalty.

6.In the instant case Clause (c) of Sub Section 3 of Section 27 of the Act has been invoked and 150% of the tax due has been levied as penalty. Admittedly there is no allegation against the petitioner of any willful non-disclosure of the assessable turnover. Admittedly the assessment was completed under Section 22(2) of the Act and the revised proceedings were initiated based on the verification from the department website. Thus, I find that the ingredients of Section 27(3) (c) of the Act do not stand attracted to the facts and circumstances of the case.

7.Accordingly the writ petition is allowed. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

maya

To

The Deputy Commercial Tax Officer
Vandavasi
Thiruvannamalai District

+1 cc to Special Government Pleader (Taxes) sr 71351
+1 cc to M/s.R.Hemalatha Advocate sr 71511

W.P No.12664 of 2017

rsl(Co)
aa09/11/2017