IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.8223 & 8224 of 2006
and
W.M.P.Nos.9146 & 9147 of 2006

M/s.Sri Kanchi Steel Pvt., Ltd.,
Arcot Road, Kilambi Village,
Krishnapuram Post, Kancheepuram. ... Petitioner in both W.Ps

Vs.

The Deputy Commercial Tax Officer,
Kancheepuram (North), Kancheepuram. ... Respondent in both W.Ps

Prayer in W.P.No.8223 of 2006: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the respondent in TNGST No.1640797/2000-2001 and quash the impugned order order dated 30.12.2005 in so far as the levy of penalty under section 12(3)(b) of the TNGST Act inview of the judgement of the Supreme Court in the case of State of Tamilnadu Vs. M/s.S.G.Jayaraj Nadar & Sons reported in 28 STC 700 and of the Division Bench of the Madras High Court in the case of M/s.Apollo Saline Pharmaceuticals Pvt., Ltd. reported in 125 STC 505.

Prayer in W.P.No.8224 of 2006: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the respondent in TNGST No.1640797/2001-2002 and quash the impugned order dated 30.12.2005 as the same has been passed without granting an opportunity to the petitioner by issuing statutory notice to the petitioner and also inview of the judgment of the Supreme Court in the case of State of Tamilnadu Vs. M/s.S.G.Jayaraj Nadar & Sons reported in 28 STC 700 and of the Division Bench of the Madras High Court in the case of M/s.Apollo Saline Pharmaceuticals Pvt., Ltd. reported in 125 STC 505.

For Petitioner (in both W.Ps.)	:	Mr.P.Rajkumar
For Respondent (in both W.Ps.)	:	Mr.S.Kanmani Annamalai, Additional Government Pleader

COMMON ORDER

Heard Mr.P.Rajkumar, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent.

2.The only issue which falls for consideration in this writ petition is whether penalty under Section 12(3)(b) can be levied on the petitioner solely for the reason that there is a difference between tax assessed and tax paid at the time of final assessment. This issue is squarely covered by the decision of the Hon'ble Division Bench in the case of Appollo Saline Pharmaceuticals (P) Ltd., Vs. The Commercial Tax Officer (FAC) and others reported in [2002] 125 STC 505 (Mad)

3.The respondent in the written instructions given to the learned Additional Government Pleader dated 09.09.2006, has elaborately set out various defaults committed by the petitioner in the matter of availment of Interest Free Sales Tax (I.F.S.T). However, that cannot have an impact on the present proceedings as the challenge to the impugned proceedings is only with regard to levy of penalty. The decision in the case of Appollo Saline Pharmaceutical (P) Ltd., Vs. Commercial Tax Officer was followed by the decision of the Hon'ble Division Bench in the case of Indira Industries Vs. The State of Tamil Nadu referred in [2014] 69 VST 139 (Mad). In the said decision, the Hon'ble Division Bench considered the Explanation to Section 12(3)(b) of the Act and held as follows:

> "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 provisions under the Tamil Nadu General Sales Tax Act, 1959. In the decision reported in [2002] 125 STC 505 (Mad) (Appollo Salime 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.

In the circumstances, applying the said decision reported in [2002] 125 STC 505 (Mad) (Appollo Saline Pharmaceuticals (P) Limited v. Commercial Tax Officer (FAC)) and the Explanation to Section 12(3)(b) of the Tamil Nadu General Sales Tax Act, the order of the Sales Tax Appellate Tribunal in levying penalty under Section 12(3)(b) of the Tamil Nadu General Sales Tax Act, 1959 is set aside and the tax case (revision) is allowed”.

4.In the light of the above, this writ petition is allowed and the impugned order is set aside only with regard to levy of penalty under Section 12(3)(b) of the Act. It is clear that this order will not have any impact on the other proceedings which are pending or to be decided with regard to other defaults committed by the petitioner and it is open to the Department to proceed against the petitioner in accordance with law.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

abr

To

The Deputy Commercial Tax Officer,
Kancheepuram (North),
Kancheepuram.

+1cc to Mr.P.Rajkumar, Advocate, S.R.No.55949
+1cc to the Special Government Pleader(T), S.R.No.56198

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RR(CO)
CA(01/09/2017)