IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.24459 of 2017 & W.M.P.No.25842 of 2017

M/s.Babu Automobile,
Rep. by its Authorized Signatory,
Arivagam Complex, Arni Road,
Timiri-632 512, Vellore District. ... Petitioner

Vs.

1.Deputy Commercial Tax Officer,
Arcot Assessment Circle, Vellore District.

2.Appellate Deputy Commissioner (CT),
Vellore Division, Vellore District. ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent in proceedings in Appeal No.1045/2015(VAT) dated 09.06.2017 and quash the above proceedings as illegal and direct the first respondent to pass fresh orders as per law after verification of accounts of the petitioner and also to provide an opportunity of personal hearing and pass fresh orders in this case.

For Petitioner : Mr.C.Baktha Siromoni

For Respondents : Mr.S.Kanmani Annamalai, for R1 & R2
Additional Government Pleader

O R D E R

Heard Mr.C.Baktha Siromoni, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepting notice on behalf of the respondents. With the consent on either side, the writ petition is taken up for final disposal.

2.The petitioner is selling two wheelers and spare parts and it is registered as a dealer on the file of the first respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short "TNVAT Act"). The matter in issue pertains to the assessment for the year 2014-15. The first respondent issued notice dated 15.06.2015, stating that on verification of purchase details of the petitioner from other dealers in Annexure II, it revealed that purchase value of Rs.1584362/- made by the petitioner has not been reported. Therefore, the first respondent proposed to assess the petitioner to tax under Section 27 of the TNVAT Act, apart from proposing to levy penalty under Section 27(3) of the TNVAT ACT at 150%.

3.The petitioner, by representation dated 30.06.2015, requested for 15 days time to submit their objections. Accordingly, on 03.08.2015, the petitioner submitted their objections. In the objections, the petitioner accepted that due to clerical mistake, their Accountant, who prepared the returns, has not included the purchases for Rs.15,83,362/- and after due

verification, they have taken into account the purchases and kept them as closing stock for the year 2014-15. The petitioner stated that the purchase value of Rs.15,84,362/- has been shown as closing stock and they proposed to sell the closing stock in the year 2015-16. Therefore, the petitioner requested the first respondent to drop the re-assessment and levy of penalty.

4.The second respondent after considering the objections, passed an order of assessment dated 29.10.2015, holding that the petitioner has accepted the defect of non-reporting of purchases and only after issue of notice, they have come forward with such plea. Further, the second respondent observed that in Annexure V to Form I for the month of June 2015, the stock value reported is Rs.170923/- and there could not be closing stock of above Rs.18 Lakhs. Therefore, the second respondent came to the conclusion that the petitioner has not maintained correct accounts and not filed correct and complete returns. Thus, the objections given by the petitioner was overruled and the proposal made in the notice dated 15.06.2015 was confirmed in all respects.

5.Aggrieved by the same, the petitioner preferred an appeal to the Appellate Deputy Commissioner (CT), Vellore, in Appeal No.1045 of 2015 (VAT). The appellate authority/the second respondent by order dated 09.06.2017, has rejected the petitioner's appeal and confirmed the order of assessment. Challenging the same, the petitioner has filed this writ petition.

6.After elaborately hearing the learned counsels on either side and perusing the materials placed on record, it is seen that the petitioner has admitted their mistake that the purchases effected by them were not accounted for in the year 2014-15. However, their specific case is that the same is accounted for in the closing stock of the year 2014-15, as they intended to sell the stock during the assessment year 2015-16. Unfortunately, the petitioner did not produce their purchase ledger, stock register, balance sheet etc., before the Assessing Officer. The explanation that is said to be given now is by stating that the Assessing Officer did not call for these documents. The burden of proof is on the petitioner to prove that there was no suppression. One factor, which appears to be correct is that the petitioner has not availed any ITC on the alleged purchase suppression. This factor is a main factor to be noted to examine the conduct of the petitioner/dealer. The second respondent/appellate authority rightly observed that the petitioner did not produce any documents before the Assessing Officer or before the appellate authority.

7.Mr.C.Baktha Siromoni, learned counsel appearing for the petitioner candidly admitted that his client has committed a mistake. However, he pleads one more opportunity may be given to the petitioner by remitting the matter for fresh consideration as the petitioner has sufficient records to show that the purchases, which were not accounted for, have been shown in the closing stock and even sold during the next assessment year (i.e.) 2015-16. That apart, one more contention advanced by the petitioner is that there is no cause of action for levying penalty. It is submitted that if the petitioner is able to establish before the appellate authority that the closing stock register showed the entire value, then it has to be seen as to whether the conduct of the petitioner was willful or there was deliberate attempt on the part of the petitioner to evade payment of tax. This aspect has to be considered for levying penalty under Section 27(3) of the Act, though the petitioner, in their objections, having not specifically pointed out the same. This being a legal issue, it is always open to the assessing authority or the appellate authority to consider the aspect.

8.Thus, for the above reasons, this Court is inclined to remand the matter to the appellate authority for fresh consideration. Accordingly, this writ petition is allowed, the impugned order is set aside and the matter is remanded to the second respondent/appellate authority with a specific direction to the petitioner to produce all the records before the appellate authority along with the memorandum of grounds of appeal raising additional grounds. This direction should be complied with by the petitioner within a period of one week from the date of receipt of a copy of this order. If such additional grounds are raised and all documents are produced by the petitioner along with a copy of this order, then the appellate authority shall afford an opportunity of personal hearing to the petitioner and decide all the issues including the issue with regard to levy of penalty and pass orders on merits and in accordance with law as expeditiously as possible. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

abr

To

1.The Deputy Commercial Tax Officer,
Arcot Assessment Circle, Vellore District.

2.The Appellate Deputy Commissioner (CT),
Vellore Division, Vellore District.

+ 1 cc to Mr.C.Baktha Siromoni Advocate,SR.66322

+ 1 cc to The Special Govt.Pleader(Taxes), SR.66350

W.P.No.24459 of 2017

SJ(CO)
NR 06/10/2017