In the High Court of Judicature at Madras

Dated : 19.09.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.24948 of 2017
and W.M.P.Nos.26321 and 26322 of 2017

M/s.Palace Investments,
rep. by its Partner Gokul R.Bathija,
6, Purasawalkam High Road,
Chennai - 7. ...Petitioner

Vs

The Assistant Commissioner (CT),
Purasawalkam Assessment Circle,
F.50, First Avenue,
Anna Nagar East, Chennai - 102. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the Respondent in his proceedings in TIN 33150481323/2012-13 dated 14.04.2017 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan
For Respondent : Mrs.Narmadha Sampath, Spl GP

O R D E R

Heard Mr.S.Ramanathan, learned counsel for the petitioner and Mrs.Narmadha Sampath, learned Special Government Pleader accepting notice for the respondent. With the consent on either side, the writ petition itself is taken up for final disposal.

2. The petitioner, who is the registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956, is before this Court challenging the assessment order for the year 2012-13 dated 14.04.2017.

3. There are two issues, one pertaining to purchase suppression and the other pertaining to difference in gross profits.

4. The learned counsel for the petitioner made elaborate submissions on the factual aspects to demonstrate that the impugned assessment order, under those two heads, are unsustainable.

5. The learned Special Government Pleader appearing on behalf of the respondent, submitted that the adjudication of both the issues pointed out by the petitioner involves re-appreciation of the factual position and that the petitioner should be relegated to avail the appeal remedy and should not be permitted to canvass those issues in a writ petition.

6. The objection raised by the learned Special Government Pleader merits acceptance, as this Court has to adjudicate the correctness of the finding recorded by the Assessing Officer on these grounds and it would amount to re-appreciation of the factual position, which normally should not be done in a writ petition, especially when matters pertaining to taxation statute. Therefore, the objection raised by the learned Special Government Pleader, in this regard, is sustained.

7. The third issue to be considered with regard to levy of penalty under Section 27(3) of the State Act.

8. Admittedly, the impugned assessment has been made based upon Form WW filed by the petitioner. The petitioner seeks to establish that the methodology adopted by the Assessing Officer based on the gross profits declared in the Form WW is wholly unsustainable. What is important to note is that the entire turnover, which has been now revised, has been culled out from Form WW filed by the petitioner. Therefore, it has to be seen, in such circumstances, as to whether the respondent was justified in levying penalty.

9. The learned Special Government Pleader would submit that the conduct of the petitioner is willful.

10. However, on a reading of the impugned assessment order, it is seen that the entire facts have been culled out from Form WW filed by the petitioner and in such cases, by applying the law laid down by the Hon'ble Division Bench of this Court in the case of Apollo Saline Pharmaceuticals Private Limited Vs. CTO [reported (2002) 125 STC Page 505], it has to be necessarily held that penalty cannot be levied.

11. Thus, by applying the said decision and taking note of the fact that the entire turnover has been culled out from Form WW, it is seen that the respondent has levied penalty.

12. Accordingly, the writ petition is partly allowed and the

levy of penalty alone is quashed with regard to the other two issues, which have been decided by the Assessing Officer. The petitioner is granted liberty to file an appeal before the Appellate Authority and the petitioner granted 15 days from the date of receipt of a copy of this order to file an appeal and if such appeal is filed within the time stipulated, the Appellate Authority shall not reject the appeal on the ground of limitation, but shall take the appeal on file and proceed further in accordance with law. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rna

To

The Assistant Commissioner (CT),
Purasawalkam Assessment Circle,
F.50, First Avenue,
Anna Nagar East, Chennai - 102.

COPY TO

The Appellate Authority,
Purasawalkam Assessment Circle,
F.50, First Avenue,
Anna Nagar East, Chennai - 102.

+1cc Mr.S.Ramanathan, Advocate SR.No.68141

W.P.No.24948 of 2017
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MN(CO)
GN(23/10/2017)