IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.07.2017

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The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition Nos. 15047 and 15048 o 2017
and
W.M.P.Nos.16288 and 16289 of 2017

M/s.G.K. Foundation,
rep. by its Partner ...Petitioner in both W.Ps.

Vs.

1. The Assistant Commissioner (CT)
Sembium Assessment Circle,
Nos.15 and 16, Malligai Avenue,
100 Feet Road, Kolathur,
Chennai 600 099.

2. The Commercial Tax Officer,
Group -I,
Central Enforcement Wing,
Greams Road, Chennai - 600 006. ...Respondents in both W.Ps.

Writ Petitions, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the case relating to the impugned orders of assessment in TIN /Year : 33191044871/2012-13 and 2013-14, dated 18.05.2017, passed by the first respondent, and to quash the same.

For Petitioner : Mr.T.Ramesh

For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader

COMMON O R D E R

Heard Mr.T.Ramesh, the learned counsel appearing for the petitioner, and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondents.

2. The petitioner, who is a registered dealer on the file of the first respondent, under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) is before this Court,

challenging the orders of assessment, confirming the levy of penalty on the ground that the petitioner did not declare the income in the monthly returns and did not pay the taxes, and paid the same only during the course of inspection.

3. The legal position with regard to the exemption of penalty, has been laid down in several decisions, and it is worthwhile to refer to the decisions rendered by the Hon'ble Division Bench of this Court, i) in the case of (State of Tamil Nadu Vs. Afra Car Jewels) reported in (2014) 76 VST 343 (Mad) and ii) (The State of Tamil Nadu, rep. by the Joint Commissioner, Chennai Vs. Tvl. Golden Holmes Pvt. Ltd.,) in Tax Case Revision Petition No.24 of 2016, dated 14.09.2016.

i) In Afra Car Jewels's case, referred to supra, it is held as under:-

> Admittedly, in the present case, we find, on facts, there is no return of assessment under section 22 (2) of the Act, by the assessee. Further, as is evident from Section27 (1) (a) and (3) of the Act, there is no escaped turnover with regard to any assessment, as no return has been filed by the assessee under section 22(2). In any event, the inspection was done in the middle of the assessment year, and therefore, there being no assessment as contemplated under section 22 (2), the said act of the assesssee will not fall under the case of escaped turnover as has been rightly held by the Tribunal. The Tribunal has given a detailed analysis and arrived at the reasoning as above, and we find no ground to interfere with the said decision of the Tribunal".

ii) In Tvl. Golden Holmes Pvt. Ltd., referred to supra, it is held as under:-

> ii) As we have noticed, section 27 (3) enables a penalty to be levied, wherever, revision of assessment has taken place, pursuant to deduction of a portion of turnover that has escaped taxation. IN the instant case, there is no dispute on the factual ground that the payment made to Sri.A.Ashok Kumar, is infact, reflected in the books of accounts, maintained by the respondent/dealer in the ordinary course of business, and thus, there is no wilfull suppression of any such expenditure indulged

in by the dealer/assessee. At the first round of assessment, in fact, it has escaped the attention of the Assessing Officer. In other words, no serious exception has been taken thereto, at the first instance. But, it is subsequent thereto, the scrutiny has been undertaken."

4. In the decision rendered by me, in re (M/s.Saravana Super Market, rep. by its Proprietor and another Vs. The Commercial Tax Officer) in W.P.Nos.35019 and 35020 of 2016, dated 01.12.2016, it is held that, 'mere non disclosure does not automatically lead to levy of penalty'.

5. In the instant cases also, the entire turnover was culled out from the books of accounts maintained by the petitioner, and tax was remitted only during the course of inspection. There is no specific finding recorded by the Authority that, there was deliberate intention on the part of the petitioner to evade payment of tax, or, to suppress the turnover. Hence, the imposition of penalty has to deleted.

6. In the result, the Writ Petitions are allowed, and the impugned orders are quashed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner (CT)
Sembium Assessment Circle,
Nos.15 and 16, Malligai Avenue,
100 Feet Road, Kolathur,
Chennai 600 099.

2. The Commercial Tax Officer,
Group -I, Central Enforcement Wing,
Greams Road, Chennai - 600 006.

+1 cc to Mr.T.Ramesh Advocate sr 49586
+1 cc to special government Pleader taxes sr 49444

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aa02/08/2017