In the High Court of Judicature at Madras

Dated : 22.9.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.25436 of 2017 & W.M.P.No.26878 of 2017

Tvl. Bharani Constructions,
Rep. by its Managing Partner,
Mr.M.Shanmugam ...Petitioner

Vs

The Commercial Tax Officer,
Namakkal (Town) Assessment
Circle, Namakkal. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records on the files of the respondent in VAT.No.33973121988/2012-13 dated 25.7.2017 and quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan
For Respondent : Mrs.S.Kanmani Annamalai, AGP

O R D E R

Heard Mr.R.Senniappan, learned counsel for the petitioner and Mrs.S.Kanmani Annamalai, learned Additional Government Pleader accepting notice for the respondent. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner is aggrieved by that portion of the impugned assessment order under the provisions of the Tamil Nadu Value Added Taxes Act, 2006 for the year 2012 - 2013 in so far as it levies penalty.

3. On a perusal of the impugned order, it is seen that the details, based on which, the revision of assessment was done, have been culled out from the documents placed by the petitioner before the Assessing Authority.

4. The petitioner's case is that tax was deducted source and the appropriate rate of tax is 2%. Therefore, the petitioner did not file returns. The respondent, while accepting that there is tax has been deducted at source, assessed the petitioner to a

higher rate of tax at 14.5%. The tax has been computed and after reckoning the amount paid by the petitioner, it is seen that there is an excess of Rs.194/-.

5. It may be true that the petitioner has not filed returns. Nevertheless, the question would be as to whether the respondent would be justified in invoking Section 27(1) of the said Act for levy of penalty. In the instant case, the petitioner's specific contention is that tax has been deducted at source by the Government Department, that there is no liability on their part and that there is no deemed sale value and in spite of that, the petitioner filed annual returns with entire details and paid tax. Thus, as long as the petitioner's conduct is not willful or deliberate with a view to evade payment of tax, the question of levy of penalty does not arise. For that reason, this Court is inclined to interfere with the order of penalty by following the order passed by this Court in the case of Nokia India Private Ltd., Vs. Deputy Commissioner (CT) and others [reported in 79 VST 137].

6. Accordingly, the writ petition is partly allowed and the impugned order invoking Section 27(3) of the said Act alone is set aside. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To
The Commercial Tax Officer, Namakkal (Town) Assessment Circle, Namakkal.

+1 cc to M/s.R.Senniappan Advocate sr 69971
+1 cc to the Special Govt Pleader sr 70743

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