IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.17126 & 17127 of 2017
and W.M.P.Nos.18596 to18599 of 2017

M/s.Effel Exports Private Limited,
Rep.by its Director-P.Hafeez Ahmed,
No.64/27, Flat No.5, 1st Floor,
Sydenhams Road,
Periamet,
Chennai- 600 003. ... Petitioner in both WPs.

Vs.

The Commercial Tax Officer,
Vepery Assessment Circle,
No.10, 3rd Floor, Greams Road,
Chennai-600 006. ... Respondent in both WPs.

Prayer in W.P.No.17126 of 2017: Petition filed under Article 226 of the Constitution of India to issue a WRIT OF CERTIORARI, to call for the records on the file respondent in his impugned proceedings made in TIN: 33850523812/2010-11 dated 14.06.2017, quash the same.

Prayer in W.P.No.17127 of 2017: Petition filed under Article 226 of the Constitution of India to issue a WRIT OF CERTIORARI, to call for the records on the file respondent in his impugned proceedings made in TIN: 33850523812/2009-10 dated 14.06.2017, quash the same.

For Petitioner (in both WPs.)	:	M/s.R.Hemalatha
For Respondent (in both WPs.)	:	Mr.K.Venkatesh, Government Advocate.

COMMON ORDER

Heard M/s.R.Hemalatha, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondent.

2.When the matter came up for admission before this Court, taking into consideration that this is the second round of litigation with regard to the same assessment years under the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) and the matter pertains only with regard to the levy of penalty, the learned Government Advocate was directed to take notice and the matter was listed today to enable the learned Government Advocate to get instructions.

3.The learned Government Advocate would submit that in respect of two communications sent to the respondent till date he has not received any instructions from the respondent. Therefore, this Court is inclined to proceed further in the matter on the available material.

4.The petitioner who is a registered dealer on the file of the respondent under the provisions of TNVAT Act is aggrieved by the impugned orders confirming the proposal to levy penalty on the deemed sale value of purchase omission and sales suppression noticed during the course of inspection. The petitioner filed their returns for the assessment years 2009-10 and 2010-11 and the petitioner was deemed to have been assessed on 30.06.2012 under section 22(2) of the TNVAT Act. After about two years, the of business of the petitioner was inspected by the officers of Enforcement Wing on 31.07.2014. This led to issuance of show cause notice dated 01.06.2015 pointing out three issues, of which, we concerned about tax levied on the difference noticed in purchase turnover between balance sheet and monthly returns filed to the Department and tax levied on the difference noticed in sales turnover between balance sheet and monthly returns filed to the Department. There was also a proposal to levy penalty under section 27(3)(b) of the TNVAT Act.

5.The petitioner even prior to submitting their objections had remitted the entire tax as pointed out by the Enforcement Officers and accordingly, they submitted their reply stating that they have already paid the tax due on the declared sale value as well as on the difference value with regard to the sales turnover. Further, with regard to levy of penalty, they stated that there is no willful concealment of any sales or purchase and they have not filed any false records and the entire proposals were based on the sales and purchases reported in the balance sheet produced before the Enforcement Officers. Further, it was stated that the Enforcement Officers have not noticed or recovered any incriminating records at the time of inspection and they have fully accepted the facts as mentioned in the balance sheet. It was further submitted that the difference between the turnover reported in the monthly returns and the balance sheet may be due to clerical error, volume of business and mistakes done by the staff of their office out of ignorance and lack of knowledge which are rectified in the audited balance sheet. Further it was submitted that they have paid the admitted tax before passing the assessment and even before issuing show cause notice and there is no incident of escaped assessment of tax as stipulated under Section 27 of the TNVAT Act and the entire proposal are due to interpretation of the facts which do not amount to escaped assessment. Finally it was submitted that in as much as there is no unearthed concealment of sales or purchases, levy of penalty is unwarranted and requested to cancel the penalty.

6.The respondent completed the assessment and passed the order after recording the entire objections given by the petitioner and observed that but for the inspection the turnover would have gone unnoticed and the tax could have been collected. The assessment orders for the years 2008-09, 2012-13 and 2013-14 were put to challenge by the petitioner by filing writ petitions in W.P.Nos.34848 to 34853 of 2015 and the writ petitions were allowed by a common order dated 12.09.2016 and the penalty was set aside and for the assessment years 2009-10, 2010-11 and 2011-12 with regard to production of Form-H, the matter was remanded to the Assessing Officer granting three months time for the petitioner to file the Form-H. Subsequently, the petitioner has filed FormH for part of the turnover and for the remaining, they have have assessed at the rate of 4%. In the impugned orders, the respondent has levied penalty under section 27(3) of the TNVAT Act on the deemed sale value of purchases omission and sales suppression. The reasoning assigned by this Court in the earlier order dated 12.09.2016 will equally apply to the case on hand. Furthermore, it cannot be disputed by the respondent that the petitioner has not filed any false record and the entire proposal which are culminated in the assessment order has been based on the details culled out from the balance sheet produced by the petitioner before the Enforcement Officers and they have not noticed or recovered any incriminating records and thus, the respondent has not brought any willful suppression on the part of the dealer and to invoke Section 27(3) of the TNVAT Act.

7.Thus, for the above reasons, this Court is convinced that this is a case where the respondent could not have imposed penalty as the entire turnover was culled out from the books of accounts produced by the petitioner and even if the petitioner had not admitted the discrepancies pointed out, still the petitioner had an opportunity to file a revised return within a period of six months. Thus, for the above reasons, the impugned order calls for interference.

8.With the above observation, the writ petitions are allowed and the impugned orders levying penalty are set aside. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CS-VIII)

True Copy

Sub-Assistant Registrar

gsk/cse

To

The Commercial Tax Officer,
Vepery Assessment Circle,
No.10, 3rd Floor, Greams Road,
Chennai-600 006.

+2 Ccs to Ms.R. Hemalatha, Advocate sr 49900.

W.P.Nos.17126 & 17127 of 2017

RJ(CO)
sp(08/08/2017)