IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP No.11554 of 2007 &
MP No. 1 of 2007

Tvl.Kamar Hardware Stores,
Rep. by its Partner, Kamaruddin,
No.10, Perianna Maistry Street,
Chennai-600 001. ... Petitioner

Vs.

The Commercial Tax Officer,
Harbour III Assessment Circle,
191, N.S.C. Bose Road,
Wavoo Complex, 7th Floor,
Chennai-600 001. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a of Writ of Certiorari, calling for the records on the files of the respondent in TNGST/004251/1994-95 dated 29.12.2006, received on 10.02.2007 and quash same as illegal, invalid and beyond the period of limitation of five years prescribed under Section 16(1) of the Tamil Nadu General Sales Tax Act, 1959.

For Petitioner : Mr.R.Senniappan
For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.Senniappan learned counsel appearing for the petitioner and Mr.K.Venkatesh learned Government Advocate appearing for the respondent.

2. The petitioner has impugned the order passed by the respondent dated 29.12.2006, confirming the proposal to levy penalty under Section 16(2) of the Tamil Nadu General Sales Tax Act, 1959, (hereinafter referred as “the TNGST Act”) for the assessment year 1994-95. The petitioner had succeeded before the first appellate authority and the State filed an appeal to the Sales Tax Appellate Tribunal, which was allowed in part and the matter was remanded. In the appellate order, the Tribunal specifically stated that the assessing officer misquoted the provisions by mentioning as Section 12(3)(b) of the TNGST Act, instead of under Section 16(2) of the TNGST Act. However, the

Appellate Tribunal did not direct the assessing officer to levy penalty, but remanded the matter to re-do the entire assessment, as it deems fit and proper and in accordance with law. Therefore, while re-doing the assessment, the respondent has to necessarily place material to show that the petitioner is liable to pay penalty under Section 16(2) of the TNGST Act. This is required because, the Section is so worded that the assessing officer should be satisfied that the escape from assessment is due to wilfull non disclosure of the assessable turnover. As pointed out above the assessment pertains to the year 1994-95. After the assessment was completed, the petitioner filed an application on 19.09.1996 under section 55 of the TNGST Act, to rectify the mistake in the assessment order. This petition was entertained and the contentions raised by the petitioner were found to be correct and accordingly, the assessment was rectified on 19.09.1996. Therefore, the respondent had absolutely no material to come to the conclusion that there has been wilful non disclosure of the assessable turnover. That apart, even as per the impugned assessment order, the entire tax has been paid. Thus, in the absence of sufficient material to hold that the case warrants levy of penalty, the respondent committed a serious error in passing the impugned order. For the above reasons the impugned order calls for interference.

Accordingly the writ petition is allowed and the impugned order is quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bsm
To
The Commercial Tax Officer,
Harbour III Assessment Circle,
191, N.S.C. Bose Road,
Wavoo Complex, 7th Floor,
Chennai-600 001.

+1cc to Mr.R.Senniapan, Advocate SR.NO.79189
+1cc to Special Government Pleader SR.No.78616

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NM(CO)
SM:23.11.2017