IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.11498 of 2009
and
M.P.No.2 of 2009

Sri Balaji Valves Pvt. Ltd.,
rep. By its Managing Director
Mr.R.Manoharan
No.39-C, M.G.R.Salai,
Palavakkam, Chennai - 600 041. ... Petitioner

Vs.

The Deputy Commercial Tax Officer,
Thiruvanmiyur Assessment Circle,
98, Annai Velankanni Church Road,
Besant Nagar, Chennai - 90. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records of the respondent in CST 53102/2002-03 dated 28.09.2007 and quash the same as illegal, arbitrary and without jurisdiction in so far as the penalty levied under Section 9(2A) of the CST Act read with Section 12(3) (b) of the TNGST Act is concerned.

For Petitioner : Mr.K.Soundararajan

For Respondents : Mr.K.Venkatesh
Government Advocate

ORDER

The petitioner has filed this writ petition challenging the impugned proceedings levying penalty under Section 9(2A) of the Central Sales Tax Act, 1956. Initially, the Assessing Officer, while completing the assessment under the provisions of the Central Sales Tax Act 2002-2003, proposed to levy penalty under Section 9(2A) of the CST Act read with 12(3)(b) of the TNGST Act. On receipt of the objections filed by the petitioner, the penalty was dropped and the Assessing Officer recorded that there is no concealment in the turnover. After a new Officer took charge, he issued a notice dated 28.05.2007 proposing to revise the assessment. In the notice, there was no proposal to levy penalty. However, while completing the revised assessment, penalty has been imposed in the order dated 28.09.2007. This has been challenged in the writ petition.

2.The respondent has given written instructions to the learned Special Government Pleader (Taxes) vide letter dated 13.07.2009. A reading of the said letter clearly shows that there was no proposal to levy penalty. In fact, the Assessing Officer wants the matter to be remitted back to him for issuing show cause notice to levy penalty. The contention raised by the respondent is to be outrightly rejected. That apart, there is no allegation of any suppression of turnover. It is only with regard to non filing of Form C declaration or certain defects in Form C declaration. Thus, it is not a case where any penalty can be levied more so when there was no proposal in the revision notice dated 28.05.2007.

3.For the above reasons, the Writ Petition is allowed and the impugned proceedings are quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

Sgl

To

The Deputy Commercial Tax Officer,
Thiruvanmiyur Assessment Circle,
98, Annai Velankanni Church Road,
Besant Nagar, Chennai - 90.

+1cc to Mr.K.SOUNDARARAJAN Advocate, S.R.No. 79176

+1cc to the spl. Government Pleader, S.R.No. 78971

W.P.No.11498 of 2009

TR(27/11/2017)