IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.01.2017

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THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

W.P.No.32811 of 2015

and MP Nos.1 and 2 of 2015

M/s.Spy Printers,
rep. by its Partner - K.Sathish,
No.56, Mettur Road,
MRP Complex,
Erode - 638 001.
Erode District. .. Petitioner

vs.

The Assistant Commissioner (CT),
Mettur Road Circle,
Erode, Erode District. .. Respondent

* * *

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, or any other appropriate Writ, Order or direction in the nature of a Writ, calling for the records on the file of respondent in his impugned proceedings made in TIN : 33753044121/2009-2010 dated 14.08.2015, quash the same.

* * *

For Petitioner : Ms.R.Hemalatha

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

ORDER

1. This is writ petition concerning the Assessment Year 2009-2010, whereby, the order dated 14.08.2015, is sought to be challenged.

1.1. The said assessment order came to be passed for the reason that the petitioner had failed to file its returns.

2. The respondent, thus, took recourse to the provisions of Section 22(4) of the Tamil Nadu Value Added Tax Act, 2006 (in short the 2006 Act). Accordingly, the impugned order was passed, based on a best judgement assessment.

3. The common case of the learned counsels for the parties before me is that prior to the respondent passing the impugned order, notice proposing imposition of tax and penalty were served on the petitioner.

4. The petitioner, being aggrieved by the impugned order, approached this Court, via the instant petition.

5. Notice in this petition was issued on 14.10.2015. I am informed by the learned counsel for the petitioner that during the pendency of the writ petition, tax and penalty has been paid by the petitioner.

5.1. Mr.Kanmani Annamalai, who appears for the respondent, affirms this position.

5.2. Therefore, the only aspect, which remains to be addressed is the imposition of penalty.

6. Learned counsel for the petitioner says that the penalty under Section 22(5) of the 2006 Act can be imposed at the rate given therein, i.e., 150%, albeit, on the difference between the tax assessed and the tax already paid by the assessee, as per the returns.

7. It is the submission of the learned counsel for the petitioner that the respondent has calculated and gone on to impose penalty, contrary to the provisions of Section 22(5) of the 2006 Act.

7.1. In the impugned order, the respondent has made the following observations, with regard to the tax due, tax paid and the balance tax outstanding :

Total tax due	:	Rs.1,38,976.00
Tax Paid	:	Rs.1,11,451.00
Balance	:	Rs.27,525.00

7.2. A perusal of the figures extracted above, would show that penalty, if, levied on the difference between the tax due and the tax paid, at the rate of 150%, could not have been pegged at Rs.2,08,464/-.

7.3. Clearly, therefore, the amount demanded towards penalty, as indicated in the impugned order, is not in consonance with the provisions of Section 22(5) of the 2006 Act.

8. Accordingly, the impugned order is set aside to the extent of levy of penalty, as this is the only aspect, which is challenged before me by the learned counsel for the petitioner.

8.1. The respondent will, therefore, re-assess the amount payable by the petitioner towards penalty, having regard to the provisions of Section 22(5) of the 2006 Act.

9. The captioned writ petition is disposed of in terms of the aforesaid direction. Resultantly, pending application shall stand closed. There shall, however, be no order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Assistant Commissioner (CT),
Mettur Road Circle,
Erode, Erode District.

+1 CC to Ms.R.Hemalatha, Advocate Sr.No.4146

+1 CC to Government Pleader, High Court, Chennai Sr.No.4034

W.P.No.32811 of 2015

PVS(CO)
KP(27.02.2017)