IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.14488 of 2007 and
M.P.No.1 of 2007

M/s.Sakthi Colours,
91-93 Thiru.Vee Kaa Street,
Surampatti Valasu, Erode - 9
Coimbatore District
Rep. By Partner ... Petitioner

Vs.

The Commercial Tax Officer,
Erode (Rural), Erode,
Coimbatore District. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the respondent in TNGST No.2903398/2005-06, quash the order dated 29/12/06.

For Petitioner : Mr.S.Raveekumar

For Respondent : Mrs.Narmatha Sampath
Special Government Pleader

ORDER

The learned counsel for the petitioner submits that the legal issue which has arisen for consideration in this case is squarely covered against the petitioner in the light of the decision of the Hon'ble Division Bench in the case of State of Tamil Nadu represented by Deputy Commissioner of Commercial Taxes, Tiruchirapalli Division, Tiruchirapalli V. Geetha Dying, in TC(R).No.842 of 2006 etc. batch dated 01.07.2011.

2.It is submitted that though the Hon'ble Division Bench held that the dyes and chemcials used in the execution of works contract would attract levy of tax, granted relief to the assessee from the levy of penalty on the ground that there was no suppression of sale in the turnover.

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3.The Special Government Pleader appearing for the respondent though would not object to the dismissal of the writ petition with regard to the levy of tax, would contest the relief the petitioner prays for with regard to penalty. In this regard, the learned Special Government Pleader referred to the written instruction given by the Assessing Officer dated 14.06.2007 and submitted that the petitioners have not disclosed the turnovers represented the transfer of property in goods involved in the execution of works contract in the monthly returns in Form A1 and not paid the tax dues thereon.

4.On a perusal of the pre-revision notice dated 08.12.2006, it is seen that upon perusal of the Form A1 returns, the Assessing Officer also check the accounts, which the petitioner was bound to produce at the time of assessment as the assessment is under the TNGST Act. On perusal of the said account books which also should be construed part and parcel of the returns and documents filed by the petitioner, the Assessment Officer came to note the petitioner has dyes and chemicals from dealers.

5.Considering the peculiar facts and circumstances, I find that this cannot be a ground to bring the alleged suppression within the scope of Section 12(3)(b) of the TNGST Act and taking note of the fact that in terms of Rule 15(5) of the Tamil Nadu General Sales Tax Rules, 1959, on receipt of a return in Form A1, the Assessing Officer subject to the provisions of sub-rule (5), if he is satisfied after such scrutiny of accounts, registers, records and other documents and such enquiry as he considers is necessary that the return is correct and complete, finally assessed on the basis of the return. In the instant case, on persual of accounts of the petitioner, the revision notice has been issued. Therefore, I find that the facts and circumstances of the present case does not warrant imposition of penalty under Section 12(3)(b) of the TNGST Act. Accordingly, while dismissing the writ petition and confirming the tax liability, the levy of penalty is set aside. The petitioner is directed to settle the entire tax liability within a period of twelve weeks from the date of receipt of a copy of this order.

6.The Writ Petition is dismissed, with the above observations. No costs. Consequently, connected miscellaneous petition is also dismissed.

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Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Sgl

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To

The Commercial Tax Officer,
Erode (Rural), Erode,
Coimbatore District.

+ 1 cc to Mr. G. Ghafoorur Rahman, Advocate Sr.74297
+ 1 cc to the Government Pleader SR.74661

W.P.No.14488 of 2007

GP(CO)
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