IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.10.2017

Coram

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.34821 of 2016
and
W.M.P.Nos.29978 & 29979 of 2016

M/s. Meena Traders,
Rep. by its Partner - S.Ashok,
Pondy Main Road,
Chinna Kangananankuppam,
Cuddalore - 607 002,
Cuddalore District.

...Petitioner

Vs.

The Assistant Commissioner [CT],
Cuddalore Taluk,
Cuddalore,
Cuddalore District.

...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, to call for the records from the file of the respondent in its impugned proceedings made in TIN:33334382467/2015-16, dated 29.07.2016 and to quash the same.

For Petitioner : M/s.R.Hemalatha
For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard M/s.R.Hemalatha, the learned counsel appearing for the petitioner and Mr.K.Venkatesh, the learned Government Advocate for the respondent. With consent on either side, this Writ Petition is taken up for final disposal.

2. The petitioner is a registered dealer on the file of the respondent, under the provisions of Tamil Nadu Value Added

Tax Act, 2006 (hereinafter, referred to as 'TNVAT Act') and deals in Tiles, Sanitary wares and Bathroom Fittings, having their place of business at Cuddalore.

3. In this Writ Petition, the petitioner challenges the order passed by the respondent, which is an order of the assessment for the year 2015-2016 under the provisions of the TNVAT Act, insofar as it makes equal time addition for estimated suppression and imposes penalty under Section 27(3) of the TNVAT Act. So far as the tax liability is concerned, the petitioner has filed their returns for the month of November 2015 well before the due date in December 2015 and paid the tax.

4. Thus, the only issue, that has to be examined in the instant case is, as to whether the respondent was justified in the facts and circumstances to make an equal time addition for the estimated suppression and levy of penalty under Section 27 (3) of the TNVAT Act.

5. The place of the business of the petitioner was inspected by the Enforcement Wing Officials of the respondent/Department on four dates, i.e., 11.11.2015, 12.11.2015, 17.11.2015 & 19.11.2015. Since the petitioner had time to file their returns upto 20th December 2015, whenever objections, which were raised by the Enforcement Wing Officials appears to have been accepted by the petitioner, and they filed returns on 20.12.2015 for November 2015, and paid the tax.

6. The respondent issued a notice, proposing to make equal time addition for estimated suppression and to levy penalty. The petitioner has in no uncertain terms stated that, they have paid the tax, and there is no allegation against the petitioner warranting equal time addition and imposition of penalty. However, the respondent rejected the petitioner's objections by referring to Rule 7(9) of the TNVAT Rules, 2007, stating that, in terms of the said provisions, such accounting after inspection is not permissible. Unfortunately, the respondent did not consider the fact that Rule 7 (9) of the TNVAT Rules, 2007 would have no application to the facts and circumstances of the instant case, as it was not a case of revised returns, but original return, filed well within the time prescribed under the Act. With regard to the equal time addition and levy of penalty is concerned, mere nondisclosure of the sales would not be sufficient to make equal time addition or imposition of penalty under Section 27(3) of the TNVAT Act.

7. This Court, in the case of (Nokia India Private Ltd., Vs. Deputy Commissioner (CT)-IV, Large Tax Payers Union, Egmore, Chennai) reported in (2015) 79 VST 137 (Mad) held that, 'willful non-disclosure of assessable turnover is condition precedent for levy of penalty and a finding is required to be recorded by the

Assessing Officer that the dealer has willfully/negligently/deliberately acted with mala fide intention not to comply with the statutory provisions. In the absence of independent reasons for imposition of penalty, it was held that such penalty was not leviable, and the equal time addition on probable suppression is not justifiable.

8. The decision rendered in the above referred case would apply with full force to the case on hand. Even in the para wise comments furnished by the respondent to the learned Special Government Pleader (Taxes) High Court, Madras, dated 23.12.2016, which is in the nature of draft counter affidavit, the respondent, in para No. 4 has admitted that the petitioner has paid the tax due on the sales turnover arrived at on the date of inspection itself. However, what is conspicuously missing in the draft counter affidavit is with regard to the date of filing of the return for the month of November 2015, which has been filed by the petitioner well before the cut off date, viz., 20.12.2015, and tax has been paid thereon. Merely stating that, it is a case of imposition of penalty, warranting equal time addition is not sufficient. In the absence of any material to establish that the conduct of the petitioner was willfull and the intension was to evade from payment of tax and penalty on equal time addition is wholly unwarranted.

9. For the above reasons, the Writ Petition is allowed, the impugned order, insofar as it makes equal time addition for estimated suppression and imposes penalty under Section 27 (3) of the TNVAT Act is set aside. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

The Assistant Commissioner [CT],
Cuddalore Taluk,
Cuddalore,
Cuddalore District.

+ 1 cc to M/s.R.Hemalatha Advocate,SR.71512
+ 1 cc to The Govt.Pleader, SR.71313

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NR 07/11/2017