IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.07.2017

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No. 25089 of 2004

Tvl. Hotel Alankar,
rep.by its Proprietor,
New Bus Stand, Vellore.

...Petitioner

Vs.

The Commercial Tax Officer
Vellore (North) Assessment Circle,
C.T.Buildings, Fort, Round, Vellore.

...Respondent

This Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, calling for the records of the respondent in TNGST 4200717/97-98 dated 19.05.2004 and to quash the same as illegal, arbitrary, without authority of law and also against the provisions of the Act in so far as the imposition of penalty Under Section 12(3)(b) of the Act is concerned.

For Petitioner : Mr.K. Soundararajan

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

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

2. The petitioner has filed this Writ Petition, challenging the demand notice issued by the respondent, demanding payment of a sum of Rs.44,839/-, on the ground that, it is penalty, which was payable by the petitioner in respect of the assessment, for the year 1997-98. The turnover of the petitioner was estimated by the Assessing Officer, and 5% addition was made for probable omission and tax was levied. Apart from that, the Assessing Officer also levied penalty under

Section 12 (3) (b) of the Tamil Nadu General Sales Tax Act, 1959 (henceforth, referred to as Act) against which, the petitioner preferred an Appeal before the Appellate Assistant Commissioner, Vellore. The Appellate Authority, by order, dated 28.10.1999, allowed the Appeal by modifying the order of the Assessing Officer and deleting the penalty in total. Aggrieved over the same, the Revenue filed Appeal before the Tamil Nadu Sales Tax Appellate Tribunal, in S.T.A.No.1679 of 2000. The Tribunal, by order, dated 04.03.2003, did not pass any specific direction, restoring the penalty, all that, it did was to increase the addition from 5% as done by the Appellate Authority to 50% of the estimated suppression.

3. On a careful perusal of the order passed by the Tribunal, I find no order restoring the penalty levied by the Assessing Officer, which was set aside by the Appellate Assistant Commissioner, Vellore. Therefore, the impugned notice, demanding a sum of Rs.44,839/- as penalty under Section 12 (3) (b) of the Act is without jurisdiction. Hence, this Writ Petition is allowed and the impugned demand notice is quashed. No costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

sd/av

To

The Commercial Tax Officer
Vellore (North) Assessment Circle,
C.T.Buildings, Fort, Round, Vellore.

+1 CC to Mr.K. Soundararajan, Advocate sr 46737
+1 CC to Spl. Govt. Pleader(Taxes) sr 46798



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KK(CO)
sp(20/07/2017)