IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.16030 of 2004 & W.P.M.P.No.19002 of 2004

Tvl.Rocks Fabricators, E8 III Phase,
Thiru.Vi.Ka.Indutrial Estate,
Guindy, Chennai-32. ... Petitioner

Vs.

The Commercial Tax Officer,
Guindy Assessment Circle, Chennai. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the respondent herein in TNGST 0901199/1999-2000 dated 29.01.2004 and quash the same in respect of levy of penalty alone as illegal, unlawful and unconstitutional.

For Petitioner : Mr.R.Ganeshkanna

For Respondent : Mr.K.Venkatesh,
Government Advocate

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O R D E R

Heard Mr.R.Ganeshkanna, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondent.

2.The petitioner, who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (in short "TNGST Act"), is before this Court challenging the impugned assessment order dated 29.01.2004, for the assessment year 1999-2000, in so far as it levies penalty. The assessment for the relevant year was completed on verification of the petitioner's books of accounts and the petitioner was finally assessed to total taxable turnover of Rs.4,06,643/- for the assessment year 1999-2000, vide order dated 29.12.2000. Subsequently, a revision notice dated 31.12.2003, was issued proposing to revise the assessment. It is not clear as to how the assessing officer got information that the petitioner has done certain fabrication work in the Chennai Port Trust. Without furnishing appropriate details, the assessment was reopened and since the petitioner did not respond to the pre-revision notice, the proposal was confirmed and the impugned assessment order has been passed. The petitioner has to be blamed for not having responded to the pre-revision notice. Therefore, the petitioner cannot avoid the tax liability and has to pay the same and it appears that only a balance of Rs.5,488/- is payable as tax. The petitioner is aggrieved by the penalty, which has been imposed in the impugned assessment order, the respondent has referred to Section 12(3)(b) of the TNGST Act for the levy of penalty.

3.Considering the facts and circumstances of this case, the said provision namely Section 12(3)(b) of the TNGST Act would not be applicable because penalty under the said provision would stand attracted only when the assessing officer has followed the procedure under Section 12(1) of the TNGST Act. The correct provision, under which penalty could have been imposed is Section 16 of the TNGST Act, which deals with assessment of escaped turnover. Under the said provision, Sub-Section 2 provides for imposition of penalty, if there is wilful non-disclosure of assessable turnover by the assessee. On persual of the impugned assessment order, I find that there is no such allegation against the petitioner. Apart from that, it is not clear as to how the respondent sourced the information that the petitioner had done certain fabrication work in the Chennai Port Trust. Thus, in the absence of any allegation that the petitioner had wilfully non-disclosed the said turnover, the question of levying penalty does not arise.

4.Accordingly, this writ petition is partly allowed and the assessment order imposing penalty is set aside and the petitioner is directed to pay the balance tax amount as quantified in the impugned assessment order. No costs. Consequently, connected miscellaneous petition is closed.

-Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

The Commercial Tax Officer,
Guindy Assessment Circle, Chennai.

+ 1 cc to The Special Government Pleader Sr.No.73579

W.P.No.16030 of 2004