IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.4.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NOS.10087 TO 10090 OF 2018
AND WMP.NOS.12043 TO 12046 OF 2018

K.Subramani Works Contractor
rep.by its Proprietor K.Subramani

...Petitioner in all WP's

Vs

The State Tax Officer, Cholavaram
Assessment Circle, No.22,
Jawaharlal Road, 1st Street,
Redhills, Chennai-52. ...Respondent in all WP's

PETITIONS under Article 226 of the Constitution of India praying for the issuance of Writs of Certiorari to call for the impugned proceedings passed respectively in TIN 33321701150/2010-11 dated 26.3.2018, TIN 33321701150/2011-12 dated 26.3.2018, TIN 33321701150/2012-13 dated 26.3.2018 and TIN 33321701150/2015-16 dated 27.3.2018 and quash the same in so far as it relates to imposition of penalty under Section 27(3) of the Tamil Nadu Value Added Tax Act, 2006 amounting to Rs.14,24,703/-; Rs.8,73,620/-; Rs.6,07,593/- and Rs.6,73,182/- respectively.

For Petitioner : Mr.N.Murali
For Respondent : Mrs.G.Dhana Madhri, GA

COMMON ORDER

Mrs.G.Dhana Madhri, learned Government Advocate accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. In these writ petitions, the petitioner has challenged the orders of assessment only with regard to the imposition of penalty on the ground that but for the surprise inspection, the suppression would not have come to light.

3. The penalty has been imposed under Section 27(3) of the Tamil Nadu Value Added Tax Act. In terms of the said provision, to levy penalty, the Assessing Officer should record his satisfaction that escapement of tax was due to willful non-disclosure. Mere non-disclosure does not automatically lead to levy of penalty. The Statute contemplates levy of penalty in cases of willful non-disclosure. Therefore, the petitioner's conduct in paying the tax at the time of inspection prior to issuance of the show cause notices can be taken into consideration. Therefore, this Court is of the view that assessment should be re-done under this head.

4. Accordingly, the writ petitions are allowed, the impugned orders are set aside and the matters are remanded to the respondent for a fresh consideration. The respondent shall take note of the conduct of the petitioner in remitting tax even prior to the issuance of the show cause notices dated 28.2.2018 and consider the issue regarding the levy of penalty and pass fresh orders in accordance with law. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

To

The State Tax Officer, Cholavaram Assessment Circle, No.22, Jawaharlal Road, 1st Street, Redhills, Chennai-52.

+4cc's to Mr.N.Murali, Advocate SR.No.29879
+1cc to Special Government Pleader (Taxes) SR.No.30439

WP.Nos.10087 to 10090 of 2018&
WMP.Nos.12043 to 12046 of 2018

SVI(CO)
GN(11/05/2018)