IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.10614 of 2008
and M.P.No.1 of 2008

M/s.Roshini Foods,
rep.by its Proprietor V.R.Balasubramanian
No.6, 2nd Floor, Prince Plaza,
Egmore, Chennai-8. ..Petitioner

Versus

The Deputy Commercial Tax Officer,
Egmore II Assessment Circle,
Spurtank Road, Cheput,
Chennai-31. ..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari or any other appropriate writ by calling for the records of the Respondent in his proceedings in TNGST/0541039/2001-02 dated 03.10.2006 in so far as the levy of penalty under Section 12(3)(b) and Section 12(3)(c) of the TNGST Act is concerned and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan

For Respondent : Mr. V.Haribabu
Additional Government
Pleader(Tax)

ORDER

This writ petition has been filed to call for the records of the respondent in his proceedings in TNGST/0541039/2001-02 dated 03.10.2006 in so far as the levy of penalty under Section 12(3)(b) and Section 12(3)(c) of the TNGST Act is concerned and quash the same as illegal.

2. By an order dated 14.03.2006, the Special-committee had remanded the case relating to the respective assessment years to the respondent to pass appropriate orders by following the decision of this Court in the case of Appollo Saline Pharmaceuticals (P) Ltd., v. Commercial Tax Officer (FAC) and

others reported in 125 STC 505.

3. As per the decision of this Court, the penalty is leviable only for the assessment based estimate and is not one based on the returns filed as per the account books.

4. As per the decision of this Court in the above case, if the assessment is based on the returns filed on behalf of the accounts maintained by the petitioner question of the imposition of penalty under Section 12(3) does not arise. Accordingly, the penalty imposed were set aside by this Court.

5. Only if best judgment is made under Section 12(2) of the TNGST, imposition of penalty under Section 12(3) of the Act is attracted. In this case also, there is no dispute that the assessment was based on the turnover declared and assessed from the books of account. Therefore, penalty under Section 12(3)(b) and Section 12(3)(c) of TNGST Act, is not leviable.

6. In view of the decision of this Court in the above case, the writ petition stands allowed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

msv/rri

To

The Deputy Commercial Tax Officer,
Egmore II Assessment Circle,
Spurtank Road, Cheput,
Chennai-31.

+1cc to Mr.S.Ramanathan, Advocate SR.No.73210

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GMY(04/12/2018)