IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 26.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.4767 of 2018
and W.M.P.No.5893 of 2018

Tvl.Nallappa Silks,
Represeted by its Partner,
Mr.V.Shanmugam,
No.10, Salem Main Road,
Kallakurichi-606 202. .. Petitioner

Versus

The State Tax Officer (Main),
Kallakurichi. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records on the file of the respondent in TIN.33874780743/2015-16 dated 11.01.2018 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan

For Respondent : Ms.G.Dhana Madhri
Government Advocate

ORDER

Heard Mr.R.Senniappan, learned counsel for the petitioner and Ms.Dhana Madhri, learned Government Advocate appearing for the respondent.

2. The petitioner has filed this writ petition challenging the assessment order passed by the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) dated 11.01.2018, for the assessment year 2015-16. Though the petitioner has challenged the impugned order levying tax as well as penalty, in this Writ Petition the challenge is restricted to levying the penalty alone.

3. The petitioner submitted their reply dated 08.12.2017 to the notice issued by the respondent dated 04.12.2017. In the said notice, the petitioner stated that they have effected purchases from the registered dealers only and all their purchases were covered by proper Tax invoices and the claim of

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input tax credit is in order as per section 19(1) of the TNVAT Act, 2006 and the input tax credit of Rs.50,814/- which was proposed to be reversed have been duly accounted for in their books and accounts and have been reported in the return also and therefore penalty is not leviable. The petitioner placed reliance on the decision in the case of Tvl.Nokia India Private Limited vs. Deputy Commissioner [(2015) 79 VST 137 (Madras)].

4. The respondent while dealing with objections stated that since there was a balance tax to be paid, levy of penalty is confirmed. Unfortunately, the respondent did not consider various decisions of this court including the decisions in the case of Nokia India Limited.

5. Admittedly, the entire details have been culled out by the respondent from the Books of Accounts and the return filed by the petitioner. When such is the factual position, the levy of penalty is not warranted.

6. For the above reasons, this writ petition is partly allowed and the impugned order is quashed in respect of levy of penalty under section 22(5) of the TNVAT Act being a sum of Rs.79,627/-. The other portions of the impugned assessment order are confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To
The State Tax Officer (Main),
Kallakurichi.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.50521

+1cc to the Special Government Pleader, S.R.No.50865

W.P.No.4767 of 2018

SMI/07.08.2018

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