In the High Court of Judicature at Madras

Dated : 28.4.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.11255 to 11260 of 2018 &
WMP.Nos.13158 to 13163 of 2018

Tvl.Dharani Recreation Club, rep.
by its Proprietor T.Lakshmipathy ...Petitioner in all WPs

Vs

The State Tax Officer, Gudiyatham
(East) Assessment Circle, Gudiyatham. ...Respondent in all WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records on the files of the respondent respectively in R.C.B1/1265/2016/Assessment 12-13, R.C.B1/ 1265/2016/Assessment 13-14, R.C.B1/1265/2016/Assessment 14-15, R.C. B1/1265/2016/Assessment 15-16, R.C.B1/1265/2016/Assessment 14-15 and R.C.B1/1265/2016/Assessment 15-16, all dated 12.1.2018 and quash the same as being contrary to the principle laid down by this Court in the judgment reported in (2007) 295 ITR 303 (Mad.) (V.Selladurai Vs. Chief Commissioner of Income Tax (OSD) and another).

For Petitioner : Mr.S.Kanmani Annamalai
For Respondents : 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. The petitioner, which is a recreation club, is registered on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006. In these writ petitions, the petitioner has challenged the assessment orders dated 12.1.2018 passed by the respondent for the assessment years 2012-13, 2013-14, 2014-15 and 2015-16.

3. The petitioner has raised two contentions, firstly stating that at the time of inspection, the petitioner pad tax to the Inspecting Officers, which was though noted by the respondent in the impugned orders dated 12.1.2018 while

computing the tax payable, credit has not been given to the payment made. Secondly, it is submitted that when the tax has already been paid at the time of inspection even prior to the issuance of show cause notices, penalty under Section 22(5) of the said Act should not be imposed. In this regard, the learned counsel for the petitioner has relied upon the decision of this Court in the case of M/s.Saravana Super Market, Vandavasi Vs. CTO, Vandavasi, Tiruvannamali District [W.P.Nos. 35019 and 35020 of 2016 dated 01.12.2016].

4. On perusal of the impugned orders, this Court finds that the respondent stated that for the defects noticed, an offence was booked and compounded in a sum of Rs.2,000/- only and the dealers have admitted the omissions and paid the tax. Having made such a statement in the impugned orders of assessment, the respondent could have verified as to whether the tax has been paid. However, the dealer is also to be partially blamed because they did not respond to the notices issued by the Assessing Officer nor produced proof for payment of tax.

5. The second aspect is that if the tax has already been paid even prior to the notices dated 26.12.2016, levy of penalty under Section 22(5) of the said Act would not arise. This has to be borne in mind while doing reassessment.

6. For the above reasons, the writ petitions are disposed of by directing the petitioner to treat the impugned orders of assessment as show cause notices and submit their objections within 15 days from the date of receipt of a copy of this order, along with proof to show that they paid tax much prior to issuance of the show cause notices dated 26.12.2016. On receipt of the reply from the petitioner, the respondent shall afford an opportunity of personal hearing, verify the correctness of the stand taken by the petitioner and pass fresh orders on merits and in accordance with law. While doing so, the respondent shall bear in mind the legal aspect as indicated in the preceding paragraph. Till fresh orders are passed in terms of the above directions, no coercive action shall be initiated against the petitioner for recovery of tax and penalty as quantified in the impugned assessment orders. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

To
The State Tax Officer,
Gudiyatham (East) Assessment Circle,
Gudiyatham.

+1cc to Mr.S.KANMANI ANNAMALAI, Advocate, S.R.No. 32056
+1cc to the Government Pleader, S.R.No. 32681

WP.Nos.11255 to 11260 of 2018&
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MR(CO)
TR(16/05/2018)