IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2018

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NOS.34094 & 34096 OF 2017

AND

W.M.P.NOS.37847 AND 37850 OF 2017

1. Tvl. Rakesh Auto Agencies,
rep. by its Proprietrix Mrs. Prema Devi.
...Petitioner in W.P.No.34094 of 2017

2. Tvl. Rakesh Auto Spares,
rep. by its Proprietor Mr. Rakesh
...Petitioner in W.P.No.34096 of 2017

Vs.

The State Tax Officer,
Villupuram - 1,
Villpuram. ...Respondent in both W.Ps.

Prayer in W.P.No.34094 of 2017

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records on the files of the respondent, in TIN No.33644682948/2015-16, dated 31.10.2017, and to quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice.

Prayer in W.P.No.34096 of 2017

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records on the files of the respondent, in TIN No.33414681959/2015-16, dated 31.10.2017, and to quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice.

For Petitioner in both W.Ps. : Mr.R.Senniappan

For Respondent : Mr.M. Hari Haran
Additional Government Pleader

C O M M O N O R D E R

Heard Mr.R.Senniappan, the learned counsel appearing for the petitioners and Mr.M. Hari Haran, the learned Additional Government Pleader for the respondent.

2. The petitioners, who are registered dealers on the file of the respondent, under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) have filed these Writ Petitions, challenging the assessment orders passed by the respondent under the provisions of the TNVAT Act, insofar as it levies penalty under Section 27 (3) (c) of the TNVAT Act and equal time addition.

3. The learned counsel appearing for the petitioners submitted that the legal issue raised by the petitioners is squarely covered by the decision of this Court, in M/s. Saravana Super Market, Tiruvannamalai District. Vs. Commercial Tax Officer, Tiruvannamalai District, in W.P.Nos.35019 and 35020 of 2016, dated 01.12.2016.

4. The learned Additional Government Pleader appearing for the respondent would submit that the dealers/petitioners have not maintained true, correct and other accounts, and therefore, imposition of penalty at 150% is justifiable.

5. In the order, dated 01.12.2016, passed in M/s. Saravana Super Market, this Court considered identical issue and examined as to whether the Assessing Officer was justified in levying 100% penalty, when the dealer admitted the tax payable even at the time of inspection much prior to the show cause notice. Taking into consideration the said fact, the Court observed that the conduct of the dealer should be taken into consideration and the assessment should be redone and such consideration should also be done with regard to equal time addition. In the case on hand also, the petitioners had paid tax even at the time of inspection much prior to the show cause notices issued by the Assessing Officer. Therefore, this is a major relevant factor, which has to be considered by the Assessing Officer, as Section 27 (3) mandates that the Assessing Officer should record his satisfaction that the escapement of tax was due to wilful non-disclosure. I find that, no such satisfaction has been recorded by the respondent, in the impugned assessment orders. Therefore, the same calls for interference.

6. Accordingly, both the Writ Petitions are allowed, the impugned orders, insofar as it levies penalty and equal time addition are set aside and the matters are remanded to the respondent for fresh consideration, who shall take note of the conduct of the petitioners in remitting the tax even prior to the issuance of show cause notices, dated 08.06.2017 and 15.06.2017, and pass fresh orders on merits and in accordance with law. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The State Tax Officer,
Villupuram - 1,
Villpuram.

+1 CC to Mr.R.Senniappan, Advocate Sr.No.6000

+1 CC to Government Pleader, High Court, Chennai Sr.No.5783

Writ Petition No.34094
& 34096 of 2017

KAN(CO)
KP(07/03/2018)