In the High Court of Judicature at Madras

Dated : 09.1.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.19262 & 19263 of 2017
& WMP.Nos.20766 & 20767 of 2017

Tvl.Bawa Medicals, rep.by its
Proprietor K.A.R.Sadiq Ali ...Petitioner in WP.19262/2017

Tvl.Sathya Medicals, rep.by its
Proprietor R.Manoharan ...Petitioner in WP.19263/2017

Vs

The Commercial Tax Officer,
Omalur Assessment Circle,
Omalur. ...Respondent in WP.19262/2017

The Assistant Commissioner (CT)
(FAC), Omalur Assessment Circle,
Omalur. ...Respondent in WP.19263/2017

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 TIN : 33843243649/2014-15 dated 16.6.2017 and TIN : 33873244360/2014-15 dated 09.5.2017 and and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioners : Mr.R.Senniappan
For Respondents : Ms.G.Dhana Madhri, GA

COMMON ORDER

Heard both.

2. The petitioners are registered dealers on the file of the respective respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and are dealing in medicines and drugs. The petitioners applied and obtained permission for assessment under Section 3(4) of the said Act for payment of tax at the rate of 0.5%, as their turnover relating to taxable goods for a year was less than Rs.50 lakhs. Therefore, after obtaining permission, they filed their monthly returns in Form K in

accordance with Rule 7(1)(d) of the Tamil Nadu Value Added Tax Rules, 2007. The monthly returns were accepted and assessments were deemed to have been completed under Section 22(2) of the said Act.

3. While so, the officials of the Enforcement Wing inspected the place of business of the petitioners on 01.2.2016 and informed the petitioners that their turnover exceeded Rs.50 lakhs and as per Section 3(4)(b) of the said Act, the petitioners should have informed the concerned Assessing Officer within seven days from the date of crossing the prescribed limit of Rs.50 lakhs. Based on such inspection, the respective respondent issued notices dated 17.6.2016 and 08.7.2016 respectively, proposing to assess the entire turnover at the rate of 5% and 14.5% respectively notwithstanding the fact that the first sales turnover of Rs.50 lakhs cannot be assessed more than 0.5% as per amended Section 3(4)(b) of the said Act. Though such a submission was made, the respective respondent did not accept the same, completed the assessment and passed the impugned orders.

4. The provisions of the said Act, more particularly Section 3(4)(b), is clear that such dealer may pay a tax for each year on his turnover relating to taxable goods upto Rs.50 lakhs at such rate not exceeding 1% (presently 0.5%) as may be notified by the Government and is liable to pay tax under Sub-Section (2) on all his sales of taxable goods above Rs.50 lakhs.

5. The said provision clearly shows that upto Rs.50 lakhs, the dealer is liable to be assessed at such rate not exceeding 0.5%. However, the respondent did not take note of the statutory provision and assessed the entire turnover at a higher rate of tax namely 5% and 14.5%. Thus, the impugned orders call for interference.

6. Accordingly, the writ petitions are allowed, the impugned orders are set aside and the matters are remanded to the respective respondent with a direction to assess the petitioners to tax at 0.5% for the turnover upto Rs.50 lakhs and over and above Rs.50 lakhs, at the rate of 5% and 14.5%. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

To

1.The Commercial Tax Officer,
Omalur Assessment Circle, Omalur.

2.The Assistant Commissioner (CT) (FAC),
Omalur Assessment Circle,
Omalur.

+ 1 cc to Mr. R. Senniappan, Advocate Sr.1570
+ 1 cc to Special Government Pleader Sr.2177

WP.Nos.19262 & 19263/2017&
WMP.Nos.20766 & 20767/2017

KGK(CO)
EU(07/02/2018