In the High Court of Judicature at Madras

Dated : 13.6.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.14255 & 14256 of 2018 &
WMP.Nos.16845 & 16846 of 2018

U.D.Enterprises, rep.by its
Proprietrix S.Usha ...Petitioner

Vs

The Commercial Tax Officer,
Mandaveli Assessment Circle,
No.46, Greenways Road,
Raja Annamalaipuram, Chennai-28. ...Respondent

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records of the respondent respectively in TIN 33210800420/2013-14 and TIN 33210800420/2014-15, both dated 09.10.2017 and quash the same.

For Petitioner :Mr.R.Kumar
For Respondent :Mr.M.Hariharan, AGP

COMMON ORDER

Mr.M.Hariharan, learned Additional Government Pleader accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner has challenged the assessment orders under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the years 2013-14 and 2014-15 in so far as they relate to levy of penalty under Section 27(4) of the said Act.

3.On a perusal of the revision notices dated 15.9.2017, it is seen that the respondent stated that he proposed to reverse the input tax credit availed by the petitioner and also proposed to levy penalty under Section 27(4) of the said Act. However, it is to be noted that even at the time of inspection, the petitioner had paid the required amount of tax. Therefore, the question would be as to whether the respondent was justified in proposing to levy penalty.

4.

4. In the show cause notices dated 15.9.2017, the respondent ought to have put the petitioner on notice that despite the petitioner paying the tax even at the time of inspection, the non disclosure alleged against the petitioner was wilful. In the absence of such a specific observation, the notices proposing levy of penalty under Section 27(4) of the said Act have to be held to be defective. This Court took such a view 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]. Thus, the conduct of the petitioner in paying the tax even at the time of inspection prior to issuance of the show cause notices can very well be taken as a factor for not imposing penalty on the petitioner. That apart, the respondent has not recorded his satisfaction that escapement of tax was due to wilful non disclosure by the assessee.

5. For all the above reasons, the writ petitions are allowed and the impugned orders are set aside. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer,
Mandaveli Assessment Circle, No.46,
Greenways Road,
Raja Annamalaipuram, Chennai-28.

+1cc to Mr.R.Kumar, Advocate,Sr.36969

+1cc to The Special Government Pleader,Sr.37629

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GSP(22/06/2018)