IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.25002 & 25003 of 2018
and
WMP Nos.29042 & 29043 of 2018

Tvl.NAPS India Footwear Co.,
Represented by its Partner
No.280/2, 281/2B, Kandarampalli Road,
Thuthipe, Ambur-635 802.

..Petitioner (in both WP's)

Vs.

The Commercial Tax Officer (Addl.)
Gudiyatham (West)
Vellore-632 602. ..Respondent (in both WP's)

Writ petition No.25002 of 2018 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the respondent in order dated 21.06.2017 in TIN 33464343838/2014-2015 and quash the same insofar as it seeks to levy penalty.

Writ petition No.25003 of 2018 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the respondent in order dated 29.05.2015 in TIN 33464343838/2014-2015 and quash the same insofar as it seeks to levy penalty.

For Petitioner : Mr.Adithya Reddy
(in both WP's)
For Respondent : Mr.Master Ganesh
Government Advocate (Tax)
(in both WP's)

C O M M O N O R D E R

WP.No.25002 of 2018 is filed challenging the order of assessment dated 21.06.2017, passed in respect of the assessment year 2014-2015. WP.No.25003 of 2018 is filed challenging another assessment order dated 29.05.2015 passed in respect of the very same assessment year.

2. In both these writ petitions, the petitioner who is one and the same, is only disputing the imposition of penalty and not questioning the tax imposed on them.

3. Heard the learned counsel for the petitioner and the learned Government Advocate (Tax) for the respondent.

4. The Assessing Officer has passed two orders of assessment in respect of the very same assessment year viz., 2014-2015, by dealing with different issues. Admittedly, the petitioner is not questioning the imposition of tax, arising out of the issue involved therein. Their only grievance is as against the imposition of penalty under Section 27(4) of the Tamil Nadu Value Added Tax Act, 2006. The main contention raised before this Court against such imposition of penalty is that the petitioner was not provided with an opportunity of personal hearing. In support of such contention, the learned counsel relied on a Circular No.7 of 2014 dated 03.02.2014 issued by the Principal Secretary/Commissioner of Commercial Taxes, Chennai-5.

5. On the other hand, the learned Government Advocate for the respondent submitted that the Assessee has not filed their reply to the notices of proposal and therefore, the respondent cannot be found fault with imposition of penalty.

6. Upon hearing the learned counsels appearing on either side and perusing the materials placed before this Court, there is no dispute to the fact that imposition of tax by the Assessing Officer is not questioned by the petitioner and on the other hand, it is seen that the petitioner has admitted and paid the tax arrived by the Assessing Officer. Their only grievance is against imposition of penalty. Needless to state that such imposition of penalty cannot be done, without affording an opportunity of personal hearing to the petitioner.

7. Today, an additional affidavit is filed before this Court on behalf of the petitioner, explaining the reasons for not filing their reply to the notices. It is stated that the notices were issued on wrong address and that the accountant to whom the mater was entrusted did not follow.

8. In any event, as this Court is convinced that the very imposition of penalty, without affording an opportunity of personal hearing would vitiate the entire proceedings, these writ petitions are allowed and the impugned orders of assessment are set aside, only insofar as imposition of penalty is concerned. Consequently, the matter is remitted back to the Assessing Officer to re-consider the issue with regard to imposition of penalty alone, after giving due opportunity of hearing to the petitioner. It is open to the petitioner to

raise all the objections with regard to imposition of penalty before the Assessing Officer. The respondent shall give such opportunity of personal hearing and pass fresh orders only in respect of imposition of penalty, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.
mk

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer (Addl.)
Gudiyatham (West)
Vellore-632 602.

+1cc to Mr.Adithya Reddy, Advocate S.R.No.67670

+1cc to the SPL. GP. (TAXES) SR 67935

KR/17/10/18

W.P.Nos.25002 & 25003 of 2018