In the High Court of Judicature at Madras

Dated : 12.7.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.17399 of 2018 & WMP.No.20685 of 2018

Tvl.Chola Vaibhav Realtors LLP,
Rep. by its Managing Partner
S.K.Senthilkumar ...Petitioner

Vs

The Assistant Commissioner (ST)
(FAC), Arisipalayam Circle, Salem. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to the proceedings in TIN.No.33566344311/2014-15 dated 31.8.2017 and quash the same in so far the levy of penalty is concerned.

For Petitioner : Mr.S.Raveekumar

For Respondent : Mrs.G.Dhana Madhri, GA

ORDER

Mrs.G.Dhana Madhri, learned Government Advocate accepts notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner has challenged the assessment order under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the year 2014-15 in so far as it relates to levy of penalty under Section 27(3) of the said Act.

3. On a perusal of the revision notice dated 28.4.2016, it is seen that the respondent stated that the petitioner had not reported the purchase value and the deemed sale value for the relevant assessment year and proposed to assess the petitioner under Section 27(1)(a) of the said Act. The petitioner sent their objections dated 18.5.2016 contending that the respondent proposed to make assessment based on the inspection conducted by the officials of the Enforcement Wing on 29.9.2015. Again, the

respondent sent the notice dated 13.1.2017, for which, the petitioner sent their objections dated NIL contending that they paid tax to the tune of Rs.10,50,970/- much prior to the issuance of the revision notices. Therefore, the question would be as to whether the respondent was justified in proposing to levy penalty.

4. In the show cause notice dated 28.4.2016, the respondent ought to have put the petitioner on notice that despite the petitioner paying the tax, the non disclosure alleged against the petitioner was willful. In the absence of such a specific observation, the notice proposing levy of penalty under Section 27(3) of the said Act has 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 much prior to issuance of the revision 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 willful non disclosure by the assessee.

5. For all the above reasons, the writ petition is allowed and the impugned order is set aside. No costs. Consequently, the connected WMP is closed.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner (ST) (FAC),
Arisipalayam Circle, Salem.

+1 CC to Mr.S. Raveekumar, Advocate sr 45565.
+1 CC to Spl. Govt. Pleader sr 46212.

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AK(CO)
SP(19/07/2018)