In the High Court of Judicature at Madras

Dated : 17.7.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.17694 to 17696 of 2018
& WMP.No.20958 to 20960 of 2018

Tvl.Chola Builders, Rep. by its
Managing Partner S.K.Senthilkumar ...Petitioner in all WPs

Vs

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

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records relating to the proceedings respectively in TIN.No.33046344306/2012-13, TIN.No. 33046344306/2013-14 and TIN.No.33046344306/2014-15, all 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

COMMON ORDER

Mrs.G.Dhana Madhri, learned Government Advocate 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 from 2012-13 to 2014-15 in so far as they relate to levy of penalty under Section 27(3) of the said Act.

3. On a perusal of the revision notices dated 29.4.2016, 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 years and therefore, proposed to assess the petitioner under Section 27(1)(a) of the said Act. The petitioner sent their objections dated 13.5.2016 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 notices dated 13.1.2017 for the relevant assessment years, for which, the petitioner sent their objections dated NIL only for the years 2013-14 and 2014-15 contending that they had already paid tax in time. In the affidavit filed in support of W.P.No.17694 of 2018 pertaining to the assessment year 2012-13, the petitioner stated that the respondent himself admitted that a sum of Rs.1,64,463/- was paid and that the tax payable is NIL. Therefore, the question would be as to whether the respondent was justified in proposing to levy penalty.

4. In the show cause notices dated 29.4.2016, 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 notices proposing levy of penalty under Section 27(3) 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 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 petitions are allowed and the impugned orders are set aside. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

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

+3cc to M/S.S.Raveekumar, Advocate Sr.46799
+1cc to the Special Government Pleader Sr.47674

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cp[co]
srg 2/8/2018