IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2019

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM
&
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

WRIT PETITION NOS. 4206, 4207 & 4208 OF 2008

Tvl.Gopu Stores & Chidambaram
Builders, rep.by its proprietor
A.Goputhi ...Petitioner
(in all writ petitions)

Vs.

1.The Tamil Nadu Sales Tax
Appellate Tribunal,
rep.by its Secretary
2nd Floor, City Civil Court Buildings,
High Court Campus,
Chennai - 600 104

2.The Appellate Assistant
Commissioner (CT) VII,
4th Floor, Kuralagam Annexure,
Chennai - 600 108.

3.The Deputy Commercial Tax Officer
Velachery Assessment Circle,
Chennai - 600 061. ...Respondents
(in all writ petitions)

Prayer in W.P.No.4206 of 2008: Writ Petitions, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, calling for the records of the first respondent in T.A.Nos.71, 72 & 73 of 2002 dated 17.08.2007 and quash the same.

For Petitioner : Mr.K.Soundararajan
(in all the writ petitions)

For Respondents : Mr.V.Haribabu
Additional Govt. Pleader
(in all the writ petitions)

ORDER

[Order of this Court was made by T.S.SIVAGNANAM.,J]

We have heard Mr.K.Soundararajan, the learned counsel for the petitioner in all the cases and Mr.V.Hari Babu, learned Additional Government Pleader appearing for the respondents in all the cases.

2. These writ petitions have been filed challenging the order passed by the Tamil Nadu Sales Tax Appellate Tribunal, Additional Bench, Chennai dated 17.08.2007 in respect of the assessments for the year 1994-95, 1995-96 & 1996-97 respectively under the provisions of TNGST Act.

3. The question involved in the instant cases are whether the petitioner is liable to the penalty levied under Section 12 (3)(a) of the TNGST Act. The identical penalty was levied on the writ petitioner for the assessment years 1993-94 and the said order of penalty was set aside by the Tamil Nadu Sales Tax Appellate Tribunal, Main Bench, Chennai in T.A.No.70 of 2002 dated 23.06.2006. Though this order was referred to by the petitioner before the Tribunal, the Tribunal did not distinguish the order rendered on finding that the petitioner is liable for penalty, as he has not willfully disclosed as there has been a willful nondisclosure.

4. In our considered view, if the Tribunal had allowed the petitioner's case for the assessment year 1994-95 and the Revenue having not preferred any writ petition against said order in T.A.No.70 of 2002, the order by the Assessing Officer was set aside and the order of the First Appellate Authority was confirmed. Therefore, judicial discipline demands that the Authorities are bound by such an order. Hence, we are of the view that Tribunal could not have taken a different view for the assessment years 1994-95, 1995-96 & 1996-97 since, the facts are identical.

5. For the above reasons, the writ petitions are allowed and orders of the Tribunal are set aside and the penalty levied under Section 12(3)(a) is also set aside. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mrm

To

1.The Secretary,
Tamil Nadu Sales Tax
Appellate Tribunal,
2nd Floor, City Civil Court Buildings,
High Court Campus,
Chennai - 600 104

2.The Appellate Assistant
Commissioner (CT) VII,
4th Floor, Kuralagam Annexure,
Chennai - 600 108.

3.The Deputy Commercial Tax Officer
Velachery Assessment Circle,
Chennai - 600 061.

+1cc to Special Government Pleader(Taxes) sr.30682
+1cc to Mr.K.Soundararajan, Advocate sr.31234

W.P.Nos.4206 to 4208 of 2008

kk(co)
nr 12/06/2019