IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2019

CORAM

THE HONOURABLE Dr.JUSTICE ANITA SUMANTH

WP.No.3419 of 2019
and
WMP. Nos.3710 & 3711 of 2019

1. Mahe Beach Trading Company,
   Represented by its Managing Partner,
   Mrs.Fathimathul Rejina

2. Mrs.K.E.Reesha,
   Partner, Mahe Beach Trading Company. ... Petitioners

.Vs.

1. Union of India Rep. by Union Territory
   of Pondicherry through the
   Chief Secretary,
   Government of Pondicherry,
   Pondicherry.

2. Commercial Tax Officer, Mahe,
   Pondicherry State. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in TIN: 34610013368/2018-19/362 dated 03.01.2019 read with TIN: 34610013368/2018-19 dated 10.01.2019, quash the same and consequently forbear the Official Respondent from interfering with the business carried on by the petitioners and restore the "C" Form in the name of the 1st Petitioner.

For Petitioner : Mr.Yashod Vardhan, Senior Counsel
for Mr.C.Ananda Ramani

For Respondents: Mrs.N.Mala,
Additional Government Pleader (Pondy)

ORDER

This Writ Petition is filed by a Partnership Firm as well as the Partner in the aforesaid Firm challenging the order passed by the Commercial Tax Officer, Mahe arrayed as 2nd respondent dated 03.01.2019 read with order dated 10.01.2019 and a quash of the same and consequential direction to the official respondents not to interfere with the business carried on by the petitioners and restore the "C" Form in the name of the first petitioner.

2. Mr.Yashod Vardhan, learned Senior Counsel appearing for the petitioners states that the first petitioner, is a Firm dealing in Petroleum products in Mahe. The business had, earlier, been carried on by an individual by name Mr.K.M.Abdul Gafoor, being the father of the 2nd petitioner. The turnover from the aforesaid business was being assessed under the provisions of the Puducherry General Sales Tax Act, 2017 (in short 'PGST') and the Puducherry Value Added Tax Act, 2007 (in short 'PVAT') regularly. The said individual passed away on 28.08.2009. It was only at that juncture that the petitioners came to be aware of certain proceedings that had been initiated by the Commercial Tax Authorities in respect of arrears of sales tax and penalty for the periods 2006-07, 2007-08 (PGST), 2007-08 & 2008-09 (PVAT).

3. Four assessments had been completed, for the periods 2006-07 to 2008-09 under the provisions of the PGST and the PVAT, two assessments for the ½ years comprised in 2007-08 for the periods governed by the respective statutes. The assessments had been challenged in appeal and the litigation had travelled to the High Court. This Court, vide order dated 29.11.2018, in Tax Case (Revision) Nos.29 to 31, 66 to 69 and 99 to 103 of 2018 and 114 to 116 & 155 to 166 of 2018, addresses the following questions raised by the legal heirs of Mr.Abdul Gafoor on the question of levy of penalty. Admittedly, the demand of taxes have been paid and settled in full. The questions of law raised are extracted below:

> 'T.C.(R) No.156 of 2018:-
>
> '(i) Whether the Appellate Tribunal erred in not considering in proper perspective the provisions of PVAT Act 2007 before reducing the percentage of penalty amount from 100% to 75%.
>
> (ii) Whether the Appellate Tribunal failed to note that the respondent inspite of service of pre-assessment notice by the Presiding Officer for suppressed turnover did not file any objections but chose to remit the arrived tax liability thereby admitting his act of suppression of turnover and hence he cannot escape the penalty amount of Rs.20,89,613/-
>
> (iii) Whether the learned Presiding Officer failed to consider, that the penalty amount was imposed upon the respondent herein as punishment for his act of suppression of

turnover and to discourage the dishonest act of tax evasion. While so, reducing the penalty amount will result in encouragement of tax evasion and the tax payers will indulge in similare act of evasion on the pretext that he can able to avoid penalty burden.

(iv) Whether the Learned presiding officer failed to consider that once the respondent/assessee herein prefers to admit the assessment amount arrived based on suppressed turnover, he cannot escape the penalty which is a penal provisions incorporated to prevent the dishonest act of tax evasion.

(v) Whether in the absence of any reliable documentary evidence the Learned presiding officer was right in reducing penalty amount as the reasoning that the respondent/assessee was suffering from financial crisis.

(vi) Whether the learned presiding officer failed to consider that sympathy cannot supplant the assessee's culpable act of the dishonest suppression of turnover.'

4. After considering the elaborate submissions of both parties, this Court has dismissed the aforesaid revision petitions and the said order has become final.

5. It is pursuant to the above order, that the impugned demand notice dated 03.01.2019 has been issued by the 2nd respondent calling upon the first petitioner, the Partnership Firm and the two partners of the Firm i.e., the 2nd petitioner and her sister to remit the penalties for the aforesaid periods amounting to a sum of Rs.2,97,82,078/-. Challenging the same, the petitioners are before this Court.

6. Mr.Yashod Vardhan, learned Senior Counsel draws attention to the provisions of Sections 29 and 34 of the PVAT Act. The sum and substance of his arguments is that the extent of liability upon a legal representative of a deceased assessee is only to the extent of the tax that arises from the assessment. The provisions of Section 29 are specific to the effect that the levy shall only be with respect to 'tax or fee assessed as payable'. In contrast, section 34 deals with payment of tax by a firm or association of persons for the period upto dissolution, and contains a specific reference to 'penalty'. Thus the exclusion of 'penalty' in Section 29 is conscious.

7. Per contra, Ms.Mala, learned Additional Government Pleader (Pondy) for the respondents, refers to the provisions of Section 38 of the Act, that states that any penalty payable

under this Act shall be deemed to be 'taxes' for the purposes of collection and recovery.

8. Be that as it may, the facts and circumstances of the present case, do not warrant an interpretation of, or adjudication upon the legal submissions made as aforesaid, simply for the reason that the legal representatives of the deceased sole Proprietor have consciously taken it upon themselves to defray the arrears of penalty for the periods in question by carrying forward the litigation and filing and pursuing the Tax Case (Revisions) before this Court. The questions raised before this Court in Tax Case (Revisions) relate specifically to the levy of penalty and the legal heirs of Mr.Abdul Gafoor, Mrs.K.E.Rehamath, Mrs.K.E.Rejina, Mr.K.E.Noushad and Mrs.K.E.Reesha are the petitioners therein. Thus there is no question that the legal representatives are, and have admitted liability to the penalty levied. Having said so, I also find that the impugned order contains a fatal flaw insofar as it is addressed to the petitioner Firm and one of its partner, both not being legal heirs of the deceased sole proprietor. The Firm and Partner cannot thus be fastened with the liability of the deceased proprietor.

9. Ms.Mala, relies on two undertakings given by the legal heirs, dated 10.09.2009 and 30.09.2009 wherein, the legal heirs undertake to defray the pending sales tax arrears standing to the name of deceased sole proprietor. As I have already stated earlier, there is no question that the legal heirs of Mr.Abdul Gafoor are liable to defray the penalties that has been imposed upon him by the Commercial Tax Authorities. However, the present order is only addressed to the Firm and Partners who cannot be held liable for the arrears of the sole proprietorship. The impugned demand notice thus fails and is set aside. It is made clear that the Department is at liberty to recover the amounts from the legal heirs of Mr.Abdul Gafoor, in accordance with law.

10. The second limb of the prayer raised by the petitioner deals with the refusal of the respondents to permit the first petitioner to download C Forms that are required for the conduct of business in order to avail concessional rate of tax. Reliance is placed on section 43 of the Act by Ms.Mala, as follows:

> '43. Withholding issue of statutory forms and seizure of goods.
>
> 1) Notwithstanding that any recovery proceedings initiated under this Act, the Assessing Officers or any other officers authorised in this regard shall have power to withhold issue of statutory or other

declarations forms to a dealer from whom any tax or penalty, interest or any other amount payable under this Act is due.'

11. Admittedly, the Firm does not have any arrears of sales tax, penalty or interest.

12. In the light of my order above, the rejection by the Department of the petitioners' request to download 'C' forms is not in accordance with law. The respondent is directed to permit the petitioner to access the website of the Department and download the necessary 'C' Forms, forthwith.

13. The Writ Petition is disposed of in the above terms. Consequently, connected miscellaneous petitions are closed. No costs.

rkp

Sd/-
Assistant Registrar(AD IV)

//True Copy//

Sub Assistant Registrar

To

1. The Chief Secretary,
   Union Territory of Pondicherry
   The Union of India,
   Government of Pondicherry,
   Pondicherry.

2. The Commercial Tax Officer,
   Mahe, Pondicherry State.

+1cc to Mr.Ananda Ramani, Advocate, SR.No.24125

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Kak(29/05/2019)