IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2019

CORAM

THE HONOURABLE MR.JUSTICE C. SARAVANAN

W.P. No. 35350 of 2005

M/s. Bee & Bee Construction (P) Ltd.,
No.36-A, Perumal Street,
St Thomas Mount,
Chennai - 600 016. ... Petitioner

Vs

1. The Deputy Commercial Tax Officer,
Alandur Assessment Circle,
No.84, Pudupet Street,
Alandur, Chennai - 600 016.

2. The Deputy Commercial Tax Officer,
Kodaikanal. .. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the Respondent in RC No. 212/1999 dated 25.03.1999 set aside the same in so far it relates to the imposition of penalty under Section 12(3) of the Tamilnadu General Sales Tax Act, 1959 in terms of the Apex Court in 28 STC 700 and followed by the Hon'ble High Court in 125 STC 505 etc and the Special Commissioner in Acts.Cell - VI/13234/2001 dated 20.04.2001.

For Petitioner : Mr. V. Sundareswaran
For Respondents : Mr. V. Hari Babu

ORDER

The Petitioner has filed this writ petition, seeking for issuance of a Writ of Certiorari, to call for the records for the records of the Respondent in RC No. 212/1999 dated 25.03.1999 set aside the same in so far it relates to the imposition of penalty under Section 12(3) of the Tamilnadu General Sales Tax Act, 1959 in terms of the Apex Court in 28 STC 700 and followed by the Hon'ble High Court in 125 STC 505 etc and the Special Commissioner in Acts.Cell - VI/13234/2001 dated 20.04.2001.

2. The case where the Petitioner was not registered as dealer under the Tamil Nadu General Sales Tax Act,1959. There

was an surprise inspection and it was found that the Petitioner was liable to pay tax but having not paid tax. Since the Petitioner was not registered before the Authority, the Show Cause Notice was issued to the Petitioner. Pursuant to which the Assessment Order passed on 25.03.1999. By the said order penalty under Section 12(3) (b) of the TNGST Act, 1959 equivalent to 150% of the Tax had evaded was proposed and levied. It is this order which the Petitioner has challenged before this Court. It is this penalty which is challenged in this writ petition. The Petitioner has not preferred an appeal against the said order and had instead filed the present writ petition stating that the imposition of penalty under Section 12 (3) (b) of the TNGST Act, 1959 was contrary to the decision of the Hon'ble Supreme court in the case of State of Madras Vs S.D. Jeyaraj Nadar & Sons, 28 STC (700) 1971.

3. The learned counsel for the Petitioner submits that where Assessment Order is based on the books of accounts maintained by the Assessee, the authorities under the TNGST Act are not empowered to invoke and pass Assessment Order under Section 12(16) of the TNGST Act. At the same time, the learned counsel for the Petitioner submit that the Petitioner has no objection to the Assessment made and submits that the Petitioner has also paid the tax. The only submission is that penalty under Section 12(1) (b) of the TNGST Act cannot be imposed. He submits that as per the decision of Hon'ble Supreme Court penalty is not liable to be imposed. He submits that at best Section 16 of the TNGST Act is interpreted that unless there is the case of wilful non disclosure of assessable turn over by a dealer, penalty under Section 16(2) of the TNGST Act cannot be imposed.

4. The learned Government Pleader appearing for the Respondents submits that the issue is covered by the above decision of the Hon'ble Supreme Court which has been followed by this Court in several cases. As there is a concession given by the Revenue, the Writ Petition is allowed with the consequential relief. No costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Deputy Commercial Tax Officer,
   Alandur Assessment Circle,
   No.84, Pudupet Street,
   Alandur, Chennai - 600 016.

2. The Deputy Commercial Tax Officer,
   Kodaikanal.

+1cc to Mr.V.Sundareswaran, Advocate Sr.No.100839
+1cc to The Special Government Pleader(Taxes), Sr.No.101302

AKM/27.01.2020 /4P-5C/
AKM/05.02.2020

W.P. No. 35350 of 2005