IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2019

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THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.11670 of 2019
and
WMP.Nos.11900 & 11901 of 2019

V.K.Sam Engineering
Rep. by its Proprietor
P.Sridhar ...Petitioner

vs.

The Commercial Tax Officer
Guindy Assessment Circle
No.46, Greenways Road,
Chennai-600 028. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the respondent passed in TIN:33330901816/2015-2016 dated 31.03.2017 and quash the same and further direct the respondent to redo the assessment in accordance with law after providing sufficient opportunity and personal hearing to the petitioner.

For Petitioner : Mr.N.Murali
For Respondents : Mr.Master Ganesh
Government Advocate

O R D E R

This writ petition is filed challenging the order of assessment dated 31.03.2017 passed by the respondent relevant to the assessment year 2015-2016.

2. The case of the petitioner is as follows:

The petitioner is a registered dealer dealing with works contract. The original assessment for the year 2015-2016 was completed by the respondent under Section 22(2) of the Tamil Nadu Value Added Tax Act, 2006, through self-assessment accepting the turnover reported by the petitioner. While so, the place of business of the petitioner was inspected by the Enforcement Wing authorities on 27.10.2015 and statement from the petitioner was recorded. The petitioner was forced to sign the said statement. The contents of the statement thus, are not binding on the petitioner. Consequently, pre-revision notice dated 28.03.2016 was issued to the petitioner. The petitioner filed their reply on 27.07.2016. Thereafter, another notice was issued on 17.08.2016. The petitioner did not file any objections. The petitioner had paid the entire tax amount as a result of inspection amounting to Rs.81,545/- at the time of inspection itself. The petitioner was under the impression that since the tax amount was paid, there will not be any further proceedings. However, the impugned order was passed on 31.03.2017 imposing penalty on the petitioner amounting to Rs.1,22,317/-. Therefore, the present writ petition is filed before this Court with the relief as stated supra.

3. A counter affidavit is filed by the respondent, wherein, it is stated that the dealer had admitted the suppression during the time of inspection on 27.10.2015 itself and paid the tax liability. Based upon the surprise inspection, pre-revision notice was issued and the Assessing Officer confirmed the proposals by way of the impugned order.

4. The learned counsel for the petitioner contended that though the petitioner has accepted the tax liability and remitted the same at the time of inspection itself, still the Assessing Officer has to give his independent reasonings and findings for justifying imposition of penalty, more particularly, by giving findings that such suppression was willful and deliberate. Thus, he contended that in the absence of any such findings, the impugned order in imposing penalty cannot be sustained.

5. On the other hand, the learned Government Advocate for the respondent contended that the petitioner has admitted the liability and paid the tax at the time of inspection and therefore, penalty was rightly imposed on the petitioner.

6. Heard both sides and perused the materials placed before this Court.

7. It is seen that in pursuant to the deemed assessment that had taken place under Section 22(2) of the TNVAT Act, 2006, relevant to the assessment year 2015-2016, the Enforcement Wing Officials inspected the premises of the petitioner on 27.10.2015 and found that the two sale invoices pertaining to the month of September 2015 were not accounted. It is further seen

that at the time of inspection, the petitioner has paid the tax liability to the tune of Rs.81,545/-. Based upon such inspection, pre-revision notice dated 28.03.2016 was issued on the petitioner. It is not in dispute that the petitioner has filed their reply on 27.07.2016. However, the Assessing Officer proceeded to confirm the proposal for penalty without expressing his view as to whether not accounting two sale invoices was willful or deliberate, especially, when it is claimed by the petitioner that one of such invoices pertains to interstate transaction.

8. This Court, at this stage, is not expressing any view on the merits of such claim made by the petitioner, as it is for the Assessing Officer to consider and decide the same. When penalty is sought to be imposed, the Assessing Officer has to specifically give finding that the sale suppression was willful and deliberate. Since I find that no such finding is given in this case, I am inclined to remit the matter back to the Assessing Officer to reconsider the issue with regard to penalty and pass orders after hearing the petitioner.

9. Accordingly, this Writ Petition is allowed and the impugned order in respect of penalty alone is set aside and the matter is remitted back to the Assessing Officer to reconsider the said issue, after providing due opportunity of hearing to the petitioner. Such exercise shall be done by the Assessing Officer within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

mk

To

The Commercial Tax Officer
Guindy Assessment Circle
No.46, Greenways Road,
Chennai-600 028.

+1 cc to Spl Government Pleader(Taxes) Sr.No.81213
+1cc to Mr.N.Murali , Advocate SR.No. 80493

W.P.No.11670 of 2019

A.SK(14/10/2019)