IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 39387 of 2015
and
M.P. No. 1 of 2015

M/s. Himx Shipping & Trading Company,
Represented by its Proprietrix
Swasthika.D,
No.43, 13th Trust Cross Street,
Raja Annamalaipuram,
Chennai - 600 028. ... Petitioner

Vs

The Deputy Commercial Tax Officer,
Mandaveli Assessment Circle,
46, Greenways Road,
Chennai - 600 028. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the Respondent in order TIN/33420803651/2013-2014 dated 25.02.2015 and notice dated 05.10.2015 in TIN No.33420803651/2015-2016 issued by the Respondent and quash the same.

For Petitioner : Mr. Joseph Prabakar
for Mr. K.G. Raghunath

For Respondent : Ms. G. Dhanamadhri
Government Advocate

ORDER

This writ petition has been filed by the Petitioner seeking for the issuance of Writ of Certiorari, to call for the records on the files of the Respondent in order TIN/33420803651/2013-2014 dated 25.02.2015 and notice dated 05.10.2015 in TIN No.33420803651/2015-2016 issued by the Respondent and quash the same.

2. The Petitioner has challenged the impugned order passed by the Respondent seeking to appropriate amount of Tax paid by the Petitioner and against the imposition of penalty under Section 27(3) of the Tamil Nadu Value Added Tax Act, 2006 (in short TNVAT Act) at the rate of 150% of Tax.

3. It is the case of the Petitioner that the impugned order passed by the Respondent is a non speaking as there is no reason given for imposing penalty under Section 27(3) of the TNVAT Act at the rate of 150% of Tax even though the Show Cause Notice itself invokes only Section 22(4) r/w 22(5) of the TNVAT Act. The Petitioner had imported a consignment of Timber. However, the Petitioner could not carry on the business, and therefore, the Petitioner closed down his business and sold the Timber at a distress value to a buyer. The Petitioner has not questioned the levy of Tax in the impugned order. The Petitioner in his submission states that since the Petitioner is bonafide importer of Timber who could not carry on the business and therefore, the imposition of penalty to file returns and to pay Tax in time cannot viewed seriously. He submits that the impugned order has also wrongly imposed penalty under Section 27(3) of the TNVAT Act, 2006 and therefore submits that the impugned order is liable to be set aside.

4. The learned Government Advocate for the Respondent submits that though in the impugned order, there is minor discrepancies while quoting wrong provisions, penalty imposed is justifiable. She submits that under Section 27(3) of the TNVAT Act, the authorities are vested with powers while imposing penalty for wilful non disclosure of assessable turn over by the dealer. She submits that under Section 22(5) of the TNVAT Act, discretion is vested with the authority and therefore even though there is wrong quoting of provision, the order passed by the Respondent is sustainable. She further submits that the Judgment relied on by the learned counsel for the Petitioner rendered in W.P. No. 34330 of 2015 dated 08.09.2016 is not applicable to the facts and circumstances of the case as it was rendered in the context of levy of penalty under Section 27(3) of the TNVAT Act, 2006.

5. Heard the learned counsel for the Petitioner and the learned Government Advocate for the Respondent.

6. The Show Cause Notice/Pre-Assessment Notice dated 14.01.2015 specifically invokes only Section 22(5) of the TNVAT Act for imposition of penalty. However, the impugned order has been passed imposing penalty under Section 27(3) of the TNVAT Act, 2006. There is no discussion as to why and how the aforesaid penalty is imposable. Therefore the impugned order is set aside with a direction to the Respondent to pass a fresh speaking order for imposing penalty alone.

7. The impugned order shall be treated as corrigendum to notice dated 05.10.2015 in TIN No.33420803651/2015-2016 issued by the Respondent. The Petitioner may file its reply/representation to the same within a period of thirty days from the date of receipt of a copy of this order. The Respondent shall thereafter pass a speaking order within a

period of three months after hearing the Petitioner.

8. This Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

arb

To

The Deputy Commercial Tax Officer,
Mandaveli Assessment Circle,
46, Greenways Road,
Chennai - 600 028.

+1cc to the Special Government Pleader(Taxes), S.R.No. 105017

W.P. No. 39387 of 2015
and
M.P. No. 1 of 2015

NMI(CO)
GN(28/02/2020)