IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 07.06.2019

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.Nos.14677 and 14680 of 2019
and W.M.P.Nos.14673 and 14674 of 2019

M/s.Chinnasamy Construction
Represented by its Proprietor
Mr.S.Chinnasamy
No.3/6, New No.7/6, Jagadambal Street
Perambur, Chennai - 600 011. .. Petitioner in both W.Ps.

Vs.

1.The State of Tamil Nadu
Represented by its Secretary to Government
Department of Sales Tax & Registration
Fort St. George, Chennai - 600 009.

2.The Commissioner of Commercial Taxes
Ezhilagam, Chepauk, Chennai - 600 005.

3.The Commercial Tax Officer
Sembium Assessment Circle
No.15 & 16, 100 Feet Road
Malligai Avenue, Kolathur,
Chennai - 600 099. .. Respondents in both W.Ps

Writ Petitions filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records relating to the impugned order of assessment dated 15.03.2019 and 24.04.2019 made in TIN No.33971045218/2013-14 and TIN No.33971045218/2014-15 respectively passed by the 3rd respondent received by the petitioner on 20.04.2019 levying penalty under Section 27(3) of the Act is concerned and quash the same and thus render justice.

For Petitioner : Mr.M.Md.Ibrahim Ali
(In both W.Ps)

For Respondents : Mr.M.Hariharan
(In both W.Ps) Addl. Government Pleader (T)

COMMON ORDER

This common order will dispose of these two writ petitions.

2. Though these two writ petitions are at the admission stage, with the consent of learned counsel on both sides, main writ petitions are taken up, heard out and disposed of. To be noted, Mr.M.Md.Ibrahim Ali, learned counsel for the writ petitioner in both these writ petitions and Mr.M.Hariharan, learned Additional Government Pleader for all the respondents in both these writ petitions are before this Court.

3. This Court is informed that facts in these two writ petitions on hand are common and the matter arises under 'Tamil Nadu Value Added Tax Act, 2006' ('TNVAT Act' for brevity)

4. Facts are common, but these two writ petitions pertain to two separate assessment orders. While W.P.No.14677 of 2019 pertains to Assessment year 2013-14, W.P.No.14680 of 2019 pertains to assessment year 2014-15. Obviously the numbers and values are also different in these two assessment orders. This Court is informed that all other factual aspects are common.

5. The short facts shorn of unnecessary particulars and imperative for disposal of these two writ petitions, as can be culled out from the case file are that the writ petitioner is doing construction business and the writ petitioner is an assessee on the file of third respondent under TNVAT Act. Writ petitioner has been filing monthly returns without delay or default and the same is being assessed and the tax is also being paid. To be noted, this is deemed assessment under Section 22 (2) of TNVAT Act. There is no dispute or disagreement that tax is being paid without any delay or default.

6. Under the aforesaid circumstances, there was an inspection of the premises of the petitioner by the Enforcement Wing Officers and they pointed out certain discrepancies later. The quantum of tax payable with regard to discrepancies pointed out by the Enforcement Wing Officers was paid in full by the writ petitioner on 29.02.2016.

7. Thereafter, impugned assessment orders in each of the writ petitions came to be passed levying penalty under Section 27(3) of TNVAT Act. To be noted, penalty levied is 150% of the tax payable.

8. Learned counsel for petitioner pressed into service an order made by a Hon'ble Single Judge of this Court being order dated 01.12.2016 in Saravana Super Market Vs. Saravana Stores

(Defunct). Saravana Super Market case was pressed into service for saying that when tax has been paid without any delay or default and when the differential tax has also been paid in full after discrepancies being pointed out by the Enforcement Wing Officers, there cannot be any levy of penalty under Section 27 (3) of TNVAT Act.

9. This Court deems it appropriate to extract the entire order in Saravana Super Market's case, which reads as follows:

> 'Heard M/s.Hemalatha, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent. With the consent of either side, the writ petition is taken up for disposal.
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> 2.In these writ petitions, the petitioner has challenged the orders of assessment only with regard to the imposition of penalty and equal time addition on the ground that but for the surprise inspection, the suppression would not have come to light. The penalty has been imposed under Section 27(3) of the Tamil Nadu Value Added Tax Act (TNVAT Act). In terms of the said provision to levy penalty the Assessing Officer should record his satisfaction that escapement of tax was due to willful non-disclosure. Mere non-disclosure does not automatically lead to levy of penalty. The statute contemplates levy of penalty in cases of willful non-disclosure. Therefore, the petitioner's conduct in paying the tax at the time of inspection prior to issuance of show cause notice can be taken into consideration. Similarly also with regard to equal time addition. Therefore, this Court is of the view that assessment should be re-done on these two heads.
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> 3.Accordingly, the writ petitions are allowed, the impugned orders are set aside and the matter is remanded to the respondent for fresh consideration who shall take note of the conduct of the petitioner in remitting tax even prior to the issuance of show cause notice dated 18.08.2016 and 31.05.2016 respectively and consider both the issues regarding the levy of penalty as well as the equal time addition and pass fresh orders in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.'

10. There is no dispute or disagreement before this Court that there is no appeal against Saravana Super Market's case and that it has been given legal quietus.

11. As Saravana Super Market's case principle has been given legal quietus, the same is now the obtaining position of law and the same is now operating.

12. In the light of the aforesaid undisputed obtaining position of law, it follows as an inevitable sequitur that the impugned assessment orders in each of the writ petitions levying 150% penalty under Section 27(3) under TNVAT Act deserve to be set aside.

13. Following Saravana Super Market's principle, the impugned orders in each of the two writ petitions being orders dated 15.03.2019 and 24.04.2019 bearing reference TIN No.33971045218/2013-14 and TIN No.33971045218/2014-15 are set aside and the matters are remanded back to the third respondent for fresh consideration for redoing the assessment in the light of Saravana Super Market's principle.

14. Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

vsm
To

1.The Secretary,
Government of Tamil Nadu
Department of Sales Tax & Registration
Fort St. George, Chennai - 600 009.

2.The Commissioner of Commercial Taxes
Ezhilagam, Chepauk, Chennai - 600 005.

3.The Commercial Tax Officer
Sembium Assessment Circle
No.15 & 16, 100 Feet Road
Malligai Avenue, Kolathur,
Chennai - 600 099.

+2cc to Mr.M.Md.Ibrahim Ali, Advocate SR.No.45752
+1cc to Special Government Pleader (Taxes)SR.No.46543

W.P.Nos.14677 and 14680 of 2019
and W.M.P.Nos.14673 and 14674 of 2019

KK(CO)
GMY(08/07/2019)