IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.27119 of 2019
and
WMP.Nos.26491 & 26493 of 2019

M/s.Supreme Chemical Industries
Represented by its Proprietor
Mr.G.Jayabal ...Petitioner

vs.

The Assistant Commissioner (CT) (FAC)
Cuddalore Town Assessment Circle
Cuddalore. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the impugned order dated 15.02.2017 issued by the respondent in TIN:33784384596/2014-2015 and quash the same.

For Petitioner : Mr.G.Derrick Sam
For Respondent : Mr.M.Hariharan
Additional Government Pleader (T)

O R D E R

Mr.M.Hariharan, learned Additional Government Pleader (Tax) takes notice for the respondent. By consent of the parties, the writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order revising the assessment dated 15.02.2017 passed in respect of the assessment year 2014-2015.

3. In respect of the assessment year 2014-2015, a notice of proposal dated 09.09.2015 was issued on the petitioner, proposing to levy tax under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 of a sum of Rs.7,36,691/-, also by proposing penalty of Rs.11,05,037/-. On receipt of such notice, the petitioner paid the tax due of Rs.7,36,691/-, through cheque dated 19.09.2015 and there is no dispute to the payment of such tax, as it is evident in the impugned

order itself. Subsequently, the Assessing Officer issued another notice dated 28.09.2015, calling upon the petitioner to pay penal interest of Rs.1,68,565/-. It is seen that the said amount was also paid by the petitioner on 05.10.2015 through the cheque dated 29.09.2015. However, the Assessing Officer has passed the order of assessment by confirming the penalty of Rs.11,05,037/-. Challenging the said order, the petitioner filed an appeal before the First Appellate Authority. It is the specific contention of the petitioner that there was no intentional or wilful sales omission on the part of the petitioner and thus, imposing penalty cannot be sustained, more particularly, when the petitioner has paid the tax due and interest immediately, on receipt of notice of proposal itself. The Appellate Authority, by order dated 05.01.2016, remitted the matter back to the Assessing Officer to consider the issue and pass orders after giving personal hearing to the petitioner. Thereafter, the present impugned order has been passed once again by confirming the penalty of Rs.11,05,037/-. The Assessing Officer pointed out that though notice was served on the petitioner through E-mail dated 06.01.2017, they have not chosen to file any reply.

4. The learned counsel for the petitioner contended that levy of penalty would arise only when there is a wilful non-disclosure of turnover. He further contended that even in his reply dated 21.09.2015, in response to the notice dated 09.09.2015, he informed the Assessing Officer, that he was sick and not able to do tax returns in time. Therefore, he contended that there is no deliberate or wilful non-disclosure of turnover and without giving any findings on that aspect, the Assessing Officer is not justified in confirming the proposal on the penalty. Insofar as not filing the reply to the notice dated 06.01.2017 is concerned, it is contended that the business itself was closed in the month of February 2017, itself and therefore, the petitioner could not make the reply.

5. On the other hand, the learned Additional Government Pleader (Tax) appearing for the respondent contended that when the notice was issued on the petitioner proposing to impose penalty, he ought to have responded to the notice by giving explanation and since no such explanation was given by the petitioner, the Assessing Officer has rightly confirmed the proposal.

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

7. In respect of the assessment year 2014-2015, the Assessing Officer proposed the tax, interest and penalty. Insofar as levy of tax and interest is concerned, it is seen that the petitioner has discharged his liability. Therefore, the only dispute is with regard to the imposition of penalty. As rightly pointed out by the learned counsel for the petitioner that, such imposition of penalty would arise only when there is a wilful non-disclosure of turnover and to that effect a specific finding should be rendered by the Assessing Officer in the impugned order. In this case, I find that no such findings rendered, except to state that the penalty is levied for wilful non-disclosure of turnover. It is true that the petitioner has not responded to the notice dated 06.01.2017. However, considering the fact that the petitioner has already discharged the tax and interest liability, this Court is of the view that one more opportunity shall be granted to the petitioner, more particularly, when he has succeeded before the Appellate Authority in getting the matter remitted back to the Assessing Officer to reconsider the issue afresh.

8. Accordingly, this Writ Petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the Assessing Officer to reconsider the issue on the penalty once again, after giving an opportunity of personal hearing to the petitioner. The petitioner shall file their objections within a period of two weeks from the date of receipt of a copy of this order. On receipt of such objections, the Assessing Officer shall fix the date of personal hearing and on completion of the same, pass fresh orders on merits and in accordance with law, within a period of four weeks thereafter. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mk

To

The Assistant Commissioner (CT) (FAC)
Cuddalore Town Assessment Circle,Cuddalore.
+1 cc to Spl Government Pleader Sr.No.79259
+1cc to Mr.Hema Radhakrishnan , Advocate SR.No. 79282

W.P.No.27119 of 2019

A.SK(01/10/2019)