IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.01.2020
CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.19045 of 2011
and
M.P. No. 1 of 2011

Revathi Home Needs,
Rep. by its Partner -T. Manivannan
No.3, M.H. Road,
Mulakadai, Chennai Distric ... Petitioner

Vs.

The Assistant Commissioner (CT),
Perambur I Assessment Circle,
Chennai District. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records on the file of the respondent in CST/869528/07-08 dated 26.05.2011 and quash the same as illegal and contrary to law.

For Petitioner : Mr.S. Rajasekar

For Respondent : Mr. A.N.R. Jayaprathap
(Government Advocate)

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O R D E R

The petitioner has Challenged the impugned order dated 26.05.2011 bearing reference No. CST/869528/07-08. The operative portion of the impugned order reads as thereunder:

> " As the dealers had previously admitted the defect vide the sworn statement, it clearly shows that the objection now filed is only an afterthought and also, the "C" form is issued only on a later date when the dealers understood that the generator sets have to be retained by them. Hence the proposal made in the notice dated 25.03.2011 is hereby confirmed and the penalty of Rs.2,10,806/- is levied u/s.10(a) of CST Act, 1956.

Penalty Due: Rs.2,10,806.00
Paid Nil

Balance Rs.2,10,806.00

This balance of penalty shall be paid within thirty days from the date of service of this notice and the penalty due shall be paid forthwith in the mode as specified in rule 23 of the Tamil Nadu Value Added Tax Rules, 2007, failing which the amount will be recovered as if it were in arrear of land revenue or fine imposed by the Magistrate."

2. The impugned order has been passed with a penalty of Rs.2,10,806/- under Section 10(a) of CST Act, 1956. Section 10 (a) of CST Act, 1956 contemplates hearing before passing orders.

3.It is the submission of the learned counsel for the petitioner that apart from the above, the issue is also fully covered by the Full Bench of this Court

rendered in the case in "C.S. Parthasarathy Chetty Vs. State of Tamil Nadu, dated 27.07.2006 reported in [2006] 148 STC 256 (Mad) [FB]. It is submitted that in view of the decision of the Full Bench of this Court, the penalty levied under Section 10(a) of CST Act, 1956 is not sustainable and therefore, the impugned notice dated 26.05.2011 is liable to be quashed.

4. The learned counsel for the respondent would submit that the petitioner failed to file reply to the notice dated 25.03.2011. As per the said notice, the petitioner was asked to file a reply within 15 days from the date of receipt of the notice. Further, in the notice itself, penalty under Section 27(3)(iii) at 150% of the tax due was proposed but was quantified as Rs.1,07,801/- in the impugned order.

5.I have considered the arguments of the learned counsel for the petitioner and the respondent.

6. It is noticed that the petitioner failed to reply to the notice dated 25.03.2011 and therefore the petitioner was at fault. At the same time, Section 10
of CST Act, 1956 contemplates an opportunity of hearing before passing orders.

The respondent ought to have called upon the petitioner for a personal hearing before passing the impugned order.

7. In the light of the above discussion, I am of the view that the impugned order is liable to be set aside and the case is remitted back to the respondent to pass a fresh order. The respondent shall pass a speaking order within a period of three months from the date of receipt of a copy of this order.

8. The writ petition, thus, stands disposed of with the above observation. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy//

Sub Assistant Registrar

lbm

To:

The Assistant Commissioner (CT),
Perambur Assessment Circle,
Chennai District.

+1cc to Mr.S.Rajasekar, Advocate, SR.No.4032.
+1cc to Government Pleader, SR.No.4275.

W.P.No.19045 of 2011
and
M.P. No. 1 of 2011

VD(CO)
CSR: 02.03.2020