IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 31077 of 2015
and
M.P. Nos. 1 of 2015

Tvl. Craft Creations
Represented by its Partner
P.S.Gururajan
No.76/1-B, Malar Garden
Goundanpalayam Road
Ganapathypalayam
Tirupur - 641 605. ... Petitioner

-vs-

The Commercial Tax Officer
Palladam Assessment Circle
Palladam. ... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the files of the Respondent in TIN. 33906245281/2011-12 dated 17.08.2015 and quash the same as being without jurisdiction and authority of law.

For Petitioner : Mr. R.Senniappan

For Respondent : Mr. R.Swarnavel, Government Advocate

O R D E R
(through video conference)

Heard Mr. R.Senniappan, Learned Counsel for the Petitioner and Mr. R.Swarnavel, Learned Government Advocate appearing for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. It is borne out of the materials placed on record that during the audit inspection by the Enforcement Wing Officers of the Commercial Tax Department from 03.02.2015 to 11.02.2015, the Petitioner had admitted unaccounted sales for the value of Rs. 75,375/- and had also paid the tax due thereon for Rs. 3,679/-. Thereafter, the Respondent had issued Notice in TIN No. 33906245281/2011-2012 dated 06.07.2015 for levying penalty under Section 27(3) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the 'TNVAT Act' for short), but no reply had been received by the Petitioner for the same. On that premise, the Respondent by Order in TIN No. 33906245281/2011-2012 dated 17.08.2015 proceeded to impose penalty at the rate of 150% of the tax amount due invoking Section 27(3)(c) of the TNVAT Act. Aggrieved thereby, the Petitioner has challenged the said order levying penalty in this Writ Petition.

3. Learned Counsel for the Petitioner submits that in respect of a similarly placed person challenging such order levying penalty, this Court in ***M/s. Saravana Super Market -vs- Commercial Tax Officer*** (Order dated 01.12.2016 in W.P. Nos. 35019 and 35020 of 2016) has held as follows:-

> *"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.*

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."

It is contended that the same infirmity as noticed in the aforesaid order is apparent on the face of record in the present case and as such, the benefit of that decision may be extended to the Petitioner also.

4. Having regard to the aforesaid submissions made, which deserve acceptance, the impugned Order in TIN No. 33906245281/2011-2012 dated 17.08.2015 passed by the Respondent is set aside and the matter is remitted to the Respondent for fresh consideration. It shall be incumbent upon the Petitioner to submit its explanation to the notice dated 06.07.2015 with supporting materials to the Respondent by 31.12.2020. The Respondent shall conduct enquiry affording full opportunity of personal hearing to the Petitioner

following the prescribed procedure in consonance with the principles of natural justice, deal with each of the contentions raised taking note of the observations and conclusions of this Court in ***M/s. Saravana Super Market -vs- Commercial Tax Officer*** (Order dated 01.12.2016 in W.P. Nos. 35019 and 35020 of 2016), and pass orders on merits and in accordance with law and communicate the decision taken to the Petitioner under written acknowledgment.

The Writ Petition is ordered on the aforesaid terms. Consequently, connected Miscellaneous Petition is closed. No costs.

03.12.2020
(3/5)

Maya/vjt
Index: Yes/No
Note: Issue order copy by 21.12.2020.

To

The Commercial Tax Officer,
Palladam Assessment Circle,
Palladam.

Copy to
Tvl. Craft Creations
Represented by its Partner
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Ganapathypalayam
Tirupur - 641 605.

P.D. AUDIKESAVALU, J.

Maya

W.P. No. 31077 of 2015

Dated : 04.12.2020
(3/5)