IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.7283 of 2020
WMP.No.8684 of 2020

Saraswathi …Petitioner

Vs

Deputy Commercial Tax Officer
Gingee Assessment circle …Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying Writ of Certiorari calling for the records of the respondent dated 30.11.2016 in TIN NO. 33334740688 / 2014-15 and quash the same to the extent that it seeks to levy penalty.

For Petitioner : Mr.Adithya Reddy

For Respondents : Ms.G.Dhana Madhri
Government Advocate

O R D E R

The petitioner challenges the levy of penalty in an order of assessment dated 30.11.2016 passed in terms of the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act').

2. The writ petition has been filed by the widow of the assessee, since deceased. As far as the enhancement of turnover is concerned the order of assessment commences on the premise that no monthly returns were filed by the petitioner. This does not appear to be factually correct as the petitioner has filed a typed set containing copies of returns filed by the assessee for the period April 2014 to March 2015 between pages 1 and 59 thereof. This has also not been denied in the counter. Therefore, there is no basis for the observation of the Officer to the effect that monthly returns have not been filed and the consequent finalization of the assessment to the best of the officers judgment and on the basis of data from the returns filed by the selling/purchasing dealers.

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3. Be that as it may, the tax is stated to have been paid in entirety and this is also not disputed by the revenue.

4. The only question that remains is as to whether there is any justification in levying penalty in terms of Section 27 (3) of the Act in the facts and circumstances of the present case. Section 27(3) provides for the levy of penalty if the assessing authority is satisfied that the escapement of turnover was occasioned by reason of the willful non-disclosure of assessable turnover by a dealer. No doubt, the authority has stated that the non-disclosure of turnover in this case is willful. However, there are no findings or observations elsewhere in the order to support the allegation that the non-disclosure is willful. In fact, as noted earlier, even the statement that the assessee has not filed monthly returns is incorrect. The deployment of the word 'willful' has to be supported or substantiated by material that would demonstrate conscious omission by an assessee to offer turnover to tax and should not just be cosmetic.

5. In the facts and circumstances as I have noted above, the impugned order of assessment, insofar as it relates to the levy of penalty, is set aside and this writ petition is allowed. Connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Ska/sl

To

Deputy Commercial Tax Officer
Gingee Assessment circle.

+1cc to Adithya Reddy, Advocate SR.34324
+1cc to Spl Govt Pleader(Taxes) SR.34733

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