IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2021

CORAM :

THE HONOURABLE MR. JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.Nos. 5803 & 5804 of 2008
and
MP Nos.2 and 2 of 2008

M/s. Vijayadeepa Constructions
Rep by its Partner V. Loganathan
9, KTVR Gardens, Kolathur, Salem
Now at KTVR Hospital Buildings
Narayanaguru Road, Saibaba Colony
Coimbatore - 11 .. Petitioner in both the Writ Petitions

Versus

1. The Tamil Nadu Sales Tax Appellate Tribunal (Addl. Bench), Coimbatore
   Commercial Taxes Buildings
   Coimbatore - 18

2. The Commercial Tax Officer
   Omalur Assessment Circle
   Omalur .. Respondents in both the Writ Petitions

Prayer in W.P. No. 5803 of 2008: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the first respondent in its order in CTSA No. 518/01 dated 05.10.2004 and consequential order in CTSRA No.7/05 dated 16.11.2007 and quash the same as illegal.

Prayer in W.P. No. 5804 of 2008: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the first respondent in its order in CTSA No. 523/01 dated 05.10.2004 and consequential order in CTSRA No.6/05 dated 16.11.2007 and quash the same as illegal.

For Petitioner : Mr. S. Ramanathan
in both the Writ Petitions

For Respondents : Mr. M. Venkateswaran
Special Government Pleader (Tax)
in both the Writ Petitions

COMMON ORDER
(Order of the Court was made by R.MAHADEVAN, J.)

Challenging the orders dated 05.10.2004 made in CTSA Nos. 518/01 and 523/01 and consequential orders dated 16.11.2007 in CTSRA Nos.7/05 and 6/05 on the file of the first respondent / Tribunal, the petitioner / assessee has come up with these writ petitions.

2.The petitioner was a registered dealer and an assessee on the file of the second respondent herein. They are doing construction work on contract basis. It appears that the petitioner did not renew their registration after 1995-96. While so, on 15.12.1999, the Enforcement Wing Officials conducted an inspection in the business place of the petitioner. During such inspection, it was noticed that the petitioner did not file returns and paid tax for the assessment years 1996-97 and 1997-98. Based on the inspection report, notices came to be issued calling upon the petitioner to produce accounts. Pursuant to the same, the petitioner submitted their returns disclosing a total and taxable turnover of Rs.28,37,550/- and Rs.5,37,530/- for the assessment year 1996-97 and Rs.37,25,250/- and Rs.2,25,250/- for the assessment year 1997-98 and paid the tax thereof. Thereafter, the second respondent, on verification of the accounts, passed assessment orders dated 31.08.1999, determining the total and taxable turnover and levying penalty under section 16(2) at 150% of tax due, besides penalty under section 45(1)(b) of the TNGST Act.

3.Aggrieved by the assessment orders dated 31.08.1999 passed by the second respondent, in respect of levy of penalty under section 16(2) of the Act, the petitioner / assessee preferred appeals before the Appellate Authority. Taking note of the submissions advanced on behalf of the petitioner/assessee, the Appellate Authority by orders dated 04.08.2000, partly allowed the appeals thereby reducing the penalty to 50% of the tax due, instead of 150%. Challenging the same, the State preferred appeals before the first respondent / Tribunal by stating that the Appellate Authority has no power to reduce the penalty imposed by the Assessing Officer; the department justified the imposition of penalty on the ground that the petitioner / assessee did not renew its registration and only after the conduct of inspection, the petitioner filed its returns; and therefore, the reduction of penalty to 50% by the appellate authority required interference.

4.The Tribunal, by orders dated 05.10.2004, accepted the submissions of the department and held that the Appellate Authority has no power to reduce the penalty levied under section 16(2) of the TNGST Act. Accordingly, the Tribunal set aside the orders of the Appellate Authority and restored penalty at 150% of the tax due, imposed by the Assessing Officer. Feeling aggrieved, the petitioner / assessee filed review applications before the Tribunal. By orders dated 16.11.2007, the Tribunal dismissed the review applications. Hence, the petitioner is before this court with the present writ petitions to quash both the orders of the Tribunal dated 05.10.2004 and 16.11.2007.

5.Heard Mr.S.Ramanathan, learned counsel for the petitioner, who submitted that the assessment made is an original assessment and not an assessment of escaped turnover and hence, penalty under section 16(2) of the TNGST Act is not warranted.

6.Mr.M.Venkateswaran, learned Special Government Pleader (Taxes) appearing for the respondents submitted that the petitioner / assessee did not file its returns for the assessment years in question, but for the inspection, they filed its returns and produced the accounts and hence, the same could be treated as escaped turnover and was assessed to tax, besides levying penalty at 150% of the tax due. Thus, according to the learned counsel, the orders impugned herein do not call for any interference at the hands of this court.

7.This court has also perused the documents enclosed in the typed set of papers, more particularly, the orders impugned herein.

8.The short question that arises for consideration in these writ petitions is, whether the penalty imposed at 150% of the tax due under section 16(2) of the TNGST Act, by the Assessing Officer, is justified.

9.Admittedly, the petitioner / assessee filed its returns disclosing the turnover for the assessment years in question, after the conduct of inspection by the Enforcement Wing Officials. However, they paid taxes, before passing the assessment orders, The second respondent passed the assessment orders dated 31.08.1999, upon perusal of the books of account produced by the petitioner / assessee. While passing such orders, the Assessing Officer levied penalty under section 16(2) of the TNGST Act at 150% of the tax due. The levy of penalty was reduced to 50% by the Appellate Authority in the appeals filed by the petitioner / assessee. But, in the appeals filed by the State, the Tribunal set aside the orders passed by the Appellate Authority and confirmed the orders passed by the Assessing Officer, with respect to levy of penalty, by observing that the Appellate Authority has no discretionary power to reduce the penalty levied under section 16(2) of the Act. The said orders were also confirmed in the review applications filed by the petitioner / Assessee.

10.As already stated, the petitioner / assessee filed its returns only after conduct of inspection by the Enforcement Wing Officers and therefore, the Assessing Officer, while assessing the tax, levied penalty, which is justified, according to the Appellate Authority. This court finds no reason to differ with the view so taken by the Appellate Authority as regards the imposition of penalty on the assessee. What was disputed is the quantum of penalty levied. While the Assessing Officer levied the penalty at 150% of the tax due, the Appellate Authority reduced it to 50%, considering the facts and circumstances of the case. However, the Tribunal set aside the same and restored the orders of the Assessing Officer, holding that the Appellate Authority has no discretionary power to reduce the penalty levied under section 16(2) of the Act.

11.Be it noted, the Appellate Authority in his discretion, may reduce or waive the amount of penalty imposed on the assessee, if he is satisfied that such assessee has prior to the issuance of notice to it, voluntarily and in good faith, made full disclosure of its turnover. In this case, the Appellate Authority has taken into consideration the fact that the petitioner / assessee had paid the entire tax, without leaving any balance before final assessment and therefore, has taken a lenient view by reducing the penalty imposed by the Assessing Officer. While so, we are of the view that the Appellate Authority is wholly justified in reduction of penalty to 50% of the tax due, instead of 150%.

12.In such view of the matter, we are inclined to set aside the orders of the Tribunal and are accordingly, set aside. Consequently, the orders passed by the Appellate Authority are restored. Both the writ petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

True Copy//

Sub Assistant Registrar

dhk/rsh

To

1. The Tamil Nadu Sales Tax Appellate
   Tribunal (Addl. Bench),
   Coimbatore Commercial Taxes Buildings
   Coimbatore - 18

2. The Commercial Tax Officer
   Omalur Assessment Circle
   Omalur.

+1cc to Mr. S. Ramanathan, Advocate, S.R.No.60538

WP Nos. 5803& 5804/2008

KSM[co]
NSK 24/01/2022