IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH
W.P. No.9432 of 2020
and
WMP Nos.11523 & 11525 of 2020

1.K.Selvamani
2. C.Palanisamy
3.S.Lakshmanasami,
4.D.Srinivasan .. Petitioners

Vs

1.The Managing Director,
Tamil Nadu State Marketing Corporation Ltd.
(TASMAC), Head Office CMDA Tower - II,
IV Floor, Gandhi Irwin Road, Egmore,
Chennai-600 008.

2.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC,) Salem Region, Salem- 16.

3.The District Manager/ Deputy Collector,
TamilNadu State Marketing Corporation Ltd.(TASMAC),
Salem District.
(Cause title amended vide order dated 23.09.2020
in WMP. No.16606 of 2020) … Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the 3rd respondent in Na. Ka.No.196/ 2020 /A-4/ C.V. dated 22.05.2020 and quash the same and consequently direct the 3rd respondent to consider the Petitioners representation dated 24.06.2020.

For Petitioners : Mr.S.Vinothkumar
For Respondents : Mr.K.Satheeshkumar,
Standing Counsel

ORDER

The petitioner challenges order dated 18.05.2020 imposing penalty on account of certain shortages of stocks amounting to Rs.7,95,770/- found in shop No.7215 at Semmanatham, Yercaud, Salem District, maintained by the petitioner. Though the petitioner has raised an objection in regard to the determination of shortages itself, admittedly the amount of Rs.7,95,770/- has been remitted. Moreover, no dispute has been raised by the petitioner in this regard, after having paid the amount as early as on 13.04.2020.

2. Mr.Satheeskumar, learned Standing Counsel states that the imposition of penalty is in terms of Clause 7(xiv) of the Code of Prevention and Detection of Fradulent Acts in TASMAC - 2014 which provides for the imposition of penalty at 50% of the amount of duty/tax quantified. In addition, the Officer imposes interest at the rate of 4% and Goods and Service Tax (GST) at the rate of 18%.

3. Mr.Satheesh, learned counsel appearing for the respondents would fairly admit to the position that the impugned order has been passed without issuing a show cause notice. He would also state that this Court has consistent in setting aside other similar orders on the ground of violation of principles of natural justice.

4. The impugned order is thus set aside. The respondent is at liberty to initiate proceedings afresh and finalize the same after hearing the petitioner by issuing a fresh show cause notice.

5. On the question of levy of GST, learned counsel for the petitioner relies on the decision of the Madurai Bench of this Court in W.P. No.10355 2020 order dated 18.12.2020 and R.Sivashanmugam Vs. The Managing Director and Others in

W.P.No12657 of 2020 and batch, order dated 22.02.2021 wherein the levy of GST in identical circumstances has been set aside. The reasoning appears to be that the provisions of Section 7(1)(d) of the GST Act, 2017 which imposes GST on activities to be treated as supply of goods or supply of services as referred to in Schedule II, stands omitted with effect from 01.07.2017. Thus, post 01.07.2017, there can be no levy of GST on the amount of penalty.

6. This Writ Petition is allowed in the aforesaid terms. No costs. Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS VII)

/TRUE COPY/

Sub-Assistant Registrar

Sl/ska

To

1 The Managing Director,
Tamil Nadu State Marketing Corporation Ltd.
(TASMAC), Head Office CMDA Tower - II,
IV Floor, Gandhi Irwin Road, Egmore,
Chennai-600 008.

2 The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd.,
(TASMAC,) Salem Region, Salem- 16.

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W.P. No.9432 of 2020
and
WMP Nos.11523, 11525 of 2020

PMK(CO)

KKN 27.04.2021