BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.02.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.1008 of 2021 and

W.M.P.(MD)No.881 of 2021

M/s.Sree Prakash Medicals,
Rep. by its Proprietor V.Balamurugan,
S/o.Velappan,
No.2/3136/10, Perumal Nagar,
Viswanatham, Sivakasi - 626 189,
Virudhunagar District. ... Petitioner

Vs.

The Assistant Commissioner(ST)-II,
Office of the Assistant Commissioner,
Sivakasi,
Virudhunagar District. ... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the respondent in No.Nil, dated 08.07.2020, quash the same.

For Petitioner : Mr.K.Gokul

For Respondent : Mr.S.Dhayalan,
Government Advocate.

O R D E R

The petitioner is a dealer registered with the respondent. The case of the respondent pertains to the assessment year 2014-15. The petitioner had opted to pay tax under the compounding scheme provided under Section 3(4) of Tamil Nadu Value Added Tax Act, 2006. He had availed the concessional rate of tax at 0.5%. The petitioner had filed his returns and the same was also assessed on that basis. But later the assessing authority found out certain discrepancies. The details of sales made by the other registered dealers was verified from departmental website and it revealed that there has been non-disclosure of the purchase turnover to the tune of Rs.1,03,37,602/-. Therefore, the respondent proposed to issue the pre-assessment notice dated 17.10.2019. The petitioner did not offer his reply, but merely sought adjournment for production of certain records. The assessment officer did not grant time to the petitioner and asked him to appear in person. The petitioner though appeared in person before the respondent, again sought time. In these circumstances, left with no other option, the respondent managed to pass final orders. By the impugned order dated 08.07.2020, the respondent called upon the petitioner to pay the balance tax to the tune of Rs.7,71,391/-. Penalty to the tune of Rs.11,57,087/-(150% of Tax suppressed) was also levied by the impugned order dated 08.07.2020. Questioning the same, this writ petition came to be filed.

2. Heard the learned counsel on either side.

3. Tmt.C.Selva Priya, Assistant Commissioner (ST)-II, Sivakasi, appeared before me through Video Conferencing and assisted the Court.

4. Even before commencing his arguments, the learned counsel appearing for the petitioner on instructions submitted that the petitioner would remit the balance tax amount to be paid by him within a period of four weeks from the date of receipt of a copy of this order. The petitioner of course has to pay the said tax amount together with statutory interest within a period of four weeks from the date of receipt of a impugned order.

5. The arguments are confined to only one issue, namely, whether the respondent was justified in levying penalty on the petitioner.

6. Though in the impugned order, the respondent had made an observation that there exists a *prima facie* case of purchase suppression by the petitioner, the same would still not be sufficient to attract Section 27(3) of Tamil Nadu Value Added Tax Act. Penalty can be levied to the tune of 150% on the tax suppression, only if the assessing authority is satisfied that the escape from the assessment is due to willful non-disclosure of assessment turnover by the dealer. It is well settled that the penalty proceedings are quasi-criminal in nature. The said provision also employs the word “may”. This is a discretion conferred on the assessment authority. It is not as if tax is levied on the petitioner, penalty will have to be levied as a matter of consequence. It is not like, calf following the cow. The assessment authority after the determining the tax liability, will have to further see if whether the element of '*mens rea*' is present. Unless a clear and direct finding is rendered in this regard, levy of penalty is not sustainable. Since such a finding has not been rendered in the impugned order, to the extent the impugned order levies penalty on the petitioner, it is set aside.

7. Recording the undertaking of the petitioner that he would remit the tax amount of Rs.7,71,391/- with interest within a period of four weeks from the date of receipt of a copy of this order, this writ petition stands partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

The Assistant Commissioner(ST)-II,
Office of the Assistant Commissioner,
Sivakasi,
Virudhunagar District.

+1 CC to M/s.SPL GP (SR-7483[F] dated 26/02/2021)

W.P.(MD)No.1008 of 2021
25.02.2021

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TR(02.03.2021) 3P 3C