IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.03.2022
CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P. No. 10275 of 2007
and
W.M.P.No. 2 of 2007

M/s.Praveen Engineering Enterprises
Represented by its Proprietorix, Mrs. P.Chandra,
No.123, A-3, Rayappa Layout,
Sanganur Road, Ganapathy,
Coimbatore ...Petitioner

Versus

1.The Secretary
Tamil Nadu Sales Tax Appellate Tribunal
Additional Bench, Coimbatore-18.

2.The Deputy Commercial Tax Officer,
Ganapathy Assessment Circle,
Coimbatore-18. ...Respondents

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 - Appellate Tribunal passed in CTA. No. 273 of 2004 dated 15.12.2005 and quash the same.

For Petitioner : Mrs. R. Hemalatha
For Respondents : Mr. Prasanth Kiran
Government Advocate (Taxes) for R2

ORDER
(Order of the court was made by R. Mahadevan, J.)

This writ petition is filed by the petitioner, calling in question the correctness of the order dated 15.12.2005 passed by the first respondent in CTA. No. 273 of 2004 and quash the same.

2. The petitioner is engaged in the business of manufacturing Automobile spares and they are an assessee under Tamil Nadu General Sales Tax Act (in short TNGST Act) and also Central Sales Tax (CST) Act. During the assessment year 2001-01, the petitioner had reported total and taxable turnover of Rs.6,07,414/- under the Self Assessment Scheme as formulated under the TNGST Act and the assessment was completed on 14.12.2001 by accepting the turnover reported by the petitioner. Similarly, under the CST Act, the petitioner reported a total and taxable turnover of Rs.17,59,047/- and the same was also accepted by the second respondent vide proceedings in CST. No. 643259/2000-01 dated 14.12.2001. In the meantime, on 06.01.2001, an inspection was conducted in the premises of the petitioner by the Enforcement Wing Officials during which they have recovered certain incriminating materials, including D-7 receipts. Based on the records so recovered, the second respondent passed a revised assessment order dated 31.10.2002, by working out the actual suppression of turnover at Rs.5,30,864/-, for which, an equal addition of the same amount was made, thereby the total taxable turnover was worked out at Rs.10,61,728/-. That apart, a penalty of Rs.95,556/- was also levied under Section 16(2) of TNGST Act.

3. Aggrieved by the revised order of assessment dated 31.10.2002, the petitioner preferred an appeal before the Appellate Assistant Commissioner (CT) in A.P. No. 35 of 2003 and the same was dismissed on 7.7.2004. Challenging the order dated 07.07.2004, the petitioner preferred second appeal before the first respondent in C.T.A. No. 273 of 2004 and the same was also dismissed. Aggrieved against the same, the petitioner is before this Court with the present writ petition.

4. Heard Mrs. R. Hemalatha, learned counsel appearing for the petitioner and Mr. Prasanth Kiran, learned Government Advocate (Taxes) appearing for the second respondent.

5. The learned counsel appearing for the petitioner submitted that the assessing authority as well as the appellate authority have not dealt with the grounds raised by the petitioner in the proper perspective. She would further submit that the assessing authority failed to note that the transactions reflected in the documents and slips recovered from the business premises of the petitioner relates to both local sales as well as interstate sales, but, proportionate relief in the revised assessment made under the CST Act has not been given. The Tribunal failed to note that the inspection conducted in the business premises of the petitioner herein was

on 6.1.2001, but the original assessment itself was completed only on 14.12.2001 and after completion of the original assessment, as an after-thought, the second respondent has arrived at the actual suppression. It is her further submission that the second respondent made equal addition of the sales suppression amount and also penalty @ 150%, which is excessive and unwarranted. In any event, the disputed tax amount to the tune of Rs.1,27,427/- has been paid by the petitioner and out of total penalty of Rs.95,556/-, an amount of Rs.13,651/- had already been paid leaving the balance amount of only Rs.81,905. Thus she confines her arguments to the extent of issuing appropriate direction to waive the balance penalty amount alone.

6. The learned Government Advocate (Taxes) appearing for the second respondent would submit that on the basis of incriminating materials recovered during the course of inspection by the Enforcement Wing Officials, sales suppression amount was worked out and equal addition of the same amount was arrived at, along with penalty @ 150% being Rs.95,556/-. On appeal, the appellate authority as well as the Tribunal have rightly held that the actual sales suppression could be unearthed only after the inspection conducted in the premises of the petitioner and therefore, imposition of equal addition as well as penalty are wholly justified. Further, the petitioner has not produced any evidence to substantiate their claim that the turnover reported by them is inclusive of the actual suppression, arrived at based on the entries reflected in the recovered records. Thus, there is no illegality or infirmity in the order passed by the tribunal warranting interference of this Court. The learned Government Advocate therefore prayed for dismissal of this writ petition.

7. Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate for the second respondent and perused the materials placed.

8. Admittedly, the actual sales suppression was arrived at by the third respondent only after an inspection was conducted in the business premises of the petitioner. The records so collected during such inspection has prompted the third respondent to arrive at actual sales suppression by means of a revised assessment order. Thus, if an inspection is not conducted in the business premises of the petitioner, the sales suppression could not have come to light. In such event, the third respondent is wholly justified in imposing double the sale suppressed amount in the revised assessment proceedings together with 150% of penalty. The appellate authority as well as the

Tribunal have also dealt with this aspect and refused to accede to the plea of the petitioner. Therefore, this Court is of the view that the order, which is impugned in this writ petition, is not required to be interfered with. However, taking note of the fact that the petitioner had already paid the entire disputed tax amount as well as a portion of the penalty amount to the tune of Rs.13,651/-, this Court is inclined to reduce the balance amount payable by the petitioner towards penalty from 150% to 50%. Except this modification, the order passed by the Tribunal is confirmed.

9. Accordingly, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Secretary,
Tamil Nadu Sales Tax Appellate Tribunal,
Additional Bench, Coimbatore-18.

2.The Deputy Commercial Tax Officer,
Ganapathy Assessment Circle,
Coimbatore-18.

+1 CC to The Special Government Pleader (T) sr 15130.

WP No. 10275 of 2007

SSN(CO)
SP(04/04/2022)