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.21710 of 2007
and
MP.No.1 of 2007

Yeses Promoters (P) Ltd.,
represented by its Managing Director,
S.Shanmugam,
2, Anusuya Avenue,
Kilpauk, Chennai - 600 010.

.. Petitioner

Versus

1. The Commercial Tax Officer,
Ayanavarm Assessment Circle,
3rd Floor, Kuragalam Annexe,
Chennai - 600 108.

2. The Appellate Assistant Commissioner (CT) VI,
Kuralagam Annexe,
VI Floor, Chennai - 600 108.

3. The Sales Tax Appellate Tribunal (Main Bench)
represented by the Secretary,
City Civil Court Buildings,
High Court Complex,
Chennai - 600 104.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of certiorari, calling for the records on the file of the third respondent in T.A.No.995/2002 dated 06.02.2007 and quash the same.

For Petitioner	:	No appearance
For R1 & R2	:	Mr. Prashanth Kiran, Government Advocate (Taxes)

ORDER

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

Challenging the order passed by the third respondent dated 06.02.2007 in T.A.No.995 of 2002, the petitioner / assessee has come up with this writ petition to quash the same.

2.According to the petitioner, they are promoters and civil works contractors. During the year 1997-98, under the bonafide impression that their activity of promoting flats is not coming under the definition of 'sale', they have not taken registration under the TNGST Act, 1959. While so, inspection was done by the Enforcement Wing Officers on 25.09.1998 and they directed the petitioner to produce their accounts. But, the petitioner neither produced the accounts nor appeared in person in response to the same. Therefore, based on the materials collected at the time of inspection, the first respondent determined the taxable turnover and passed the assessment order dated 31.08.1999, imposing tax, besides levying penalty of Rs.5,46,673/- under section 12(3)(b) of the TNGST Act. Challenging the same, the petitioner preferred an appeal before the appellate authority, who by order dated 27.02.2002, dismissed the appeal thereby confirming the assessment order, including penalty. The said order of the appellate authority was also affirmed by the Tamil Nadu Sales Tax Appellate Tribunal / third respondent, by order dated 06.02.2007, which is impugned in this writ petition.

3.On 28.01.2022, when the matter was taken up for consideration, there was no representation for the petitioner and hence, the same was directed to be listed next week under the caption “for dismissal”. Accordingly, the writ petition was listed on 04.02.2022 under the caption “for dismissal”, however, there was no representation for the petitioner, at the time of calling. To give a final chance, the matter was directed to be listed on 24.02.2022 under the same caption. Even today, there is no representation for the petitioner. Therefore, this court is inclined to proceed with the matter on merits.

4.The main ground raised in the affidavit filed in support of this writ petition is that there was no transfer of property of any movable goods and what has been transferred was only an immovable property of duly constructed flats; the turnover has been arrived at based on the purchase account maintained by the petitioner and the purchase bills; and therefore, it is an assessment under section 12(1) of the Act. In such circumstances, the levy of penalty under section 12(3)(b) is without jurisdiction. It is further averred by the petitioner that they have engaged sub contractors and hence, to the extent of the work done by the sub contractors, who are registered dealers, the liability determined in the order of assessment cannot be sustained. Stating so, it was prayed that the writ petition may be allowed by setting aside the order of the Tribunal.

5.The averments made in the writ petition have been resisted by the learned Government Advocate (Taxes) appearing for the respondents 1 and 2 by contending that after analysing the entire facts and circumstances of the case, the Tribunal has rightly dismissed the petitioner's appeal after having observed that the assessment had been made without reference to the books of accounts and consequently, the penalty levied was found to be justified. Therefore, according to the learned counsel, the order impugned herein does not require any interference at the hands of this court.

6.Heard the learned Government Advocate (Taxes) appearing for the respondents 1 and 2 and also perused the materials available on record.

7.The challenge in this writ petition is to the concurrent findings of the authorities below, with reference to assessment made on the disputed turnover as well as levy of penalty on the petitioner.

8.Admittedly, the petitioner is a promoter in the business of civil works contract and they are not a registered dealer under the TNGST Act. The Enforcement wing officials conducted inspection on 29.05.1998 and found that the petitioner had purchased goods to the value of Rs.32,89,605/-, but did not produce bills for purchase of tax suffered goods viz., sand, bricks and blue metals. Hence, notice was issued calling upon the petitioner to produce the books of accounts. But the petitioner did not produce accounts nor filed any detailed reply with supportive documents. Therefore, based on the materials collected and statement obtained, the first respondent / assessing officer quantified the tax at Rs.3,64,449/-, besides levied penalty of Rs.5,46,673/- under section 12(3)(b) of the Act, in the assessment order dated 31.08.1999.

9.The order of assessment was put to challenge by the petitioner before the second respondent / Appellate Authority. Upon hearing both sides, the second respondent dismissed the appeal recording the following well considered findings:

> "...Even at the time of hearing of this appeal, no records were produced to show that the work was entrusted to sub-contractors and sub-contractors had paid the tax or were not liable to tax as the goods were purchased by them from local registered dealers. The only ground taken is that the flats constructed

were not sold to the ultimate buyers and therefore the transfer of property occurs only at the time when the flats are sold. But it has not been shown that the appellant was the owner of the land and the flat was constructed at his own premises. In the absence of evidence to show that the land belonged to that of the appellant, the contention taken that the transfer of property is completed only when the flat is sold, is not acceptable. In the absence of evidence of sufferance of tax on the materials purchased by the appellant, it is not possible to accept any of the above contentions. It is also not made clear as to whether the sub-contractors were assessed to tax or granted exemption by the respective assessing officer. The learned authorised representative has not produced any assessment order to this effect. Thus the requirement of section 3-B(2)(b) and 2(d) were not at all fulfilled to allow the deductions contemplated under the Act. The appellant was also not a registered dealer and therefore, the levy of penalty under section 12(3)(a) at 150% cannot also be found fault with. I am therefore not inclined to interfere with the assessment order including the levy of penalty."

10.The third respondent / Tribunal also rightly dismissed the second appeal filed by the petitioner and confirmed the orders of the lower authorities, on the ground that the petitioner had not produced any books of accounts either before the inspecting officers or before the Assessing Officer.

11.This court finds no reason much less valid reason to differ with the concurrent findings so rendered by the Authorities below, in the absence of any material evidence in respect of the disputed turnover made by the petitioner and consequential levy of penalty.

12.In such view of the matter, the writ petition deserves to be dismissed as devoid of merits and is accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-CCC)

//True Copy//

Sub Assistant Registrar

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To

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2. The Appellate Assistant Commissioner (CT) VI,
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3. The Secretary,
   The Sales Tax Appellate Tribunal (Main Bench),
   City Civil Court Buildings,
   High Court Complex,
   Chennai - 600 104.

+1cc to the Special Government Pleader (Taxes), S.R.No.15132

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and
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PMK(CO)
SU(04/04/2022)