IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2023

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THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.No.4202 of 2022
and
W.M.P.No.4353 of 2022

Annai Corporation,
Represented by its Partner,
S.Mahendran,
Old No.3/12, New No.4/581,
Velachery Main Road,
Medavakkam,
Chennai – 600 100. ... Petitioner

Vs

The Assistant Commissioner (CT)(FAC),
Medavakkam Assessement Circle,
Room No.232, II Floor,
Integrated Building of Commercial Taxes
and Registration Department,
South Tower, Government Farm House,
Nandanam, Chennai – 600 035. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the files of the respondent herein in TIN/33340983727/2016-17 dated 19.01.2022 quashing the same.

For Petitioner : Mr.U.Sriram for
Mr.N.Inbarajan

For Respondent : Mr.V.Prasanth Kiran
Government Advocate

ORDER

The petitioner is aggrieved by the impugned order dated 19.01.2022 in TIN.No.33340983727/2016-17 imposing penalty on the petitioner under Section 27(4) of the TNVAT Act, 2006.

2. The petitioner was issued with a notice on 21.10.2021, to which the petitioner did not reply. Thereafter, the petitioner was called for a personal hearing on 08.12.2021. Thereafter, the impugned order dated 19.01.2022 was passed by respondent. Relevant portion of the impugned order reads as under:

> "New provision was inserted as per Government Gazette Notification No:217 dated 14.10.2015 [Act No.13 of 2015], Section 19(1) of TNVAT Act stipulates that there shall be the ITC of the **amount paid** under this Act, by the registered dealer to the seller or his purchases of the goods specified in the first schedule.

The registered dealer who claims ITC, shall establish that the tax due on purchase of goods has actually been paid in the manner prescribed by the reported dealer who sold such goods and that the goods have been actually been delivered. Further the tax defined under Section 32 of TNVAT Act shall be deemed to have been paid under this Act for the purpose of this sub-section.

It was noticed from the data available that **the selling dealer have not filed the return through online which is mandatory** under Section 21. But, the purchasing dealer have purchased goods from these dealers and availed input tax credit. The seller has not paid tax as per the above proviso, hence the ITC claimed by the purchasing dealers registered may be reversed.

The penalty will be levied under Section 27(2) read with Section 27(4). As per amendment and Government Gazette Notification No:217 dated 14.10.2015, the dealer has to pay as penalty a sum which shall be **300%** of the tax due in respect of such claim.

As per Section 17(1) of TNVAT Act 2006, the burden of proving that any transaction or any turnover of a dealer is not liable to tax, shall lie on such dealer only. But, the dealers have failed to prove their burden of proof as required under Section 17(1) of TNVAT Act, 2006.

In addition to the tax determined under sub-section (2) of Section 27 of TNVAT Act, I shall direct the dealer to pay the **300% towards penalty** in respect of such claim under Section 27(4) of TNVAT Act, 2006.

Penalty levied under Section 27(4)	:Rs.13,98,210.00
Less: Paid	:Rs. NIL
Total penalty amount to be paid	**:Rs.13,98,210.00**

3. The impugned order has been passed after the petitioner was suffered an adverse order on 11.07.2019. The petitioner has also accepted the liability and paid the tax thereon, subsequent to order dated 11.07.2019.

4. The petitioner had filed a rectification application under Section 84 of the TNVAT Act, 2006. The rectification application has been rejected vide order dated 14.02.2022. It is submitted that under similar circumstances, taking note of Section 17(4) of the TNVAT Act, 2006, this Court in the case of ***Simran International*** Vs. ***Assistant Commissioner (CT), Periamet Assessement Circle, Chennai*** reported in [2017] 9 VST-OL 333 (Mad), held that there was no justification in imposing penalty under Section 27(4) of the TNVAT Act, 2006.

5. The learned counsel for the petitioner submits that this Court had compared Section 62 of the TNGST Act, 1959 and Section 27(4) of the TNVAT Act, 2006, while dropping the penalty in the above case.

6. Defending the impugned order, the learned Government Advocate for the respondent would submit that the impugned order is well reasoned and requires no interference. It is submitted that the provisions as it stood when the order was passed for the period covered in the case of ***Simran International*** Vs. ***Assistant Commissioner (CT), Periamet Assessement Circle, Chennai*** reported in [2017] 9 VST-OL 333 (Mad) read differently from the provisions as it stood at the time during the period in dispute with effect from 29.01.2016. He therefore submits that there is no scope for any discretion in the imposition of penalty under Section 27(4) of the Act and therefore prays for dismissal of the present writ petition.

7. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

8. The period in dispute in the present case is 2016-2017. The petitioner having chosen to file an application under Section 84 of the TNVAT Act, against the impugned order has come before this Court after the said order was rejected by the respondent vide order dated 14.02.2022.

9. The provision of Section 27(4) as stated during the period in dispute reads differently from the provisions as it stood prior to the period in dispute. The decision of this Court in the case of ***Simran International*** referred to supra compared the Section 16(2) of the TNGST Act, 1959 with Section 27(4) of TNVAT Act, 2006 cannot be applied. The amended provisions in Section 27(4) of the TNVAT Act, 2006 as it stood prior to 2016 read differently. They are reproduced below:

Prior to amendment	Section 27(4) *as substituted from 29th January 2016 by Section 11 of the Second Amendment Act (13 of) 2015.*
(4) In addition to the tax determined under sub-section (2), the assessing authority shall direct the dealer to pay as penalty as sum - (i)which shall be in the case of first such detection, fifty per cent of the tax due in respect of such claim; and (ii)which shall be in the case of second or subsequent detections, one hundred per cent of the tax due in respect of such claim."	In addition to the tax determined under Sub-Section (2), the assessing authority shall direct the dealer to pay as penalty a sum which shall be three hundred per cent of the tax due in respect of such claim.
Provided that no penalty shall be levied without giving the dealer a reasonable opportunity of showing cause against such imposition.	

10. There is no scope for discretion vested with an Assessing Officer while imposing penalty under Section 27(4) with effect from 30.01.2016 by virtue of Section 11 of the second amendment Act, 2016. The decision referred to supra under similar circumstances in the context

of unamended Section 27(4) of the Act cannot be applied in the context of 27(4) after amendment. Therefore, there is no merits in this writ petition. The writ petition is therefore liable to be dismissed.

11. This writ petition stands dismissed. No costs. Consequently, connected writ miscellaneous petition is closed.

03.08.2023

Index: Yes/ No
Internet : Yes/No
Speaking/Non-speaking Order
Neutral Citation : Yes/No
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To

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