IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 16.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.3419 of 2015

M/s. Lakshmi Agencies
rep by its proprietor Mr.A.Murthy
No.542/21, G.S.T.Road
Tambaram, Chennai-15 .. Petitioner

Vs.

The Assessment Commissioner (CT)
Tambaram Assessment Circle
No.19A, Sivashanmugam road
West Tambaram, Chennai-45 ... Respondent

prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the first respondent in TIN:33160942601/2012-13 dated 19.01.2015 quash the same as ultravires of the provisions of the Tamilnadu Value Added Tax Act, 2006.

For Petitioner : Mr.V.Sundareswaran

For Respondent : Mr.ANR.Jayapratap
AGP (T)

ORDER

Petitioner has come forward with the aforesaid prayer.

2. For the sake of convenience, Section 3(4) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter the Act) is extracted below:

> "(4) (a) Notwithstanding anything contained in sub-section (2), but subject to the provisions of subsection (1), every dealer, who effects second and subsequent sales of goods purchased within the State, whose total turnover relating to taxable goods, for a year, is less than rupees fifty lakhs, may, at his option, instead of paying tax under sub-section (2), pay a tax, for each year, on his turnover relating to taxable goods at such rate not exceeding one

percent, as may be notified by the Government. Such option shall be exercised by the dealer , -
(i) Who commences business, within thirty days from the date of commencement of the business;
(ii) Whose turnover is below rupees fifty lakhs during the previous year, on or before 30^{th} day of April of the year for which he exercises such options;

(iii) For the year 2008-09, within thirty days from the date of commencement of the Tamil Nadu Value Added Tax (Second Amendment) Ordinance, 2008;

Provided that such dealer shall not collect any amount by way of tax or purporting to be by way of tax
Provided further that such dealer shall not be entitled to input tax credit on the goods purchased by him
Provided also that the dealer who purchased goods from such dealer shall not be entitled to input tax credit on the goods purchased by him.
(b) If the turnover relating to taxable goods, of a dealer paying tax under clause (a) in a year, reaches rupees fifty lakhs at any time during that year, he shall inform the assessing authority in writing within seven days from the date on which such turnover has so reached, such dealer is liable to pay tax under sub-section (2) on all his sales of rupees fifty lakhs and above and he is entitled to the input tax credit on the purchases made from the date, and on the stock available with him, the purchases of which has been made within ninety days before the date, on which such turnover has reached rupees fifty lakhs;

Provided that such dealer whose turnover has reached rupees fifty lakhs during the previous year shall not be entitled to exercise such option for subsequent years.

3. Admittedly, in this case, the sales had been done to the tune of Rs.48,18,950/-. In view of Section 3(4) (a)(ii) extracted supra, the respondent has no jurisdiction to assess the tax based on the purchase value. According to the petitioner, the respondent had taken the purchase value as yardstick without considering the provisions of the Act. The statute speaks about Sales Tax turnover alone for the purpose of liablity under Section 3(4) of the Act.

4. The respondent has filed counter contending that the petitioner has got alternative remedy of filing appeal under

Section 51 of the Act and this court need not exercise its extra-ordinary jurisdiction to interfere with the order passed by the respondent.

5. The provisions of Section 3(4) is very clear and the same has also been extracted by the respondent in para 7 of the counter which has also been extracted supra. When the sales had been done only to the tune of Rs.48,18,950/- which is less than Rs.50,00,000/-, I find some force in the contention of the petitioner. Hence, the impugned order is set aside. The writ petition is allowed. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kpr

To
The Assessment Commissioner (CT)
Tambaram Assessment Circle
No.19A, Sivashanmugam road
West Tambaram, Chennai-45.

1 cc to Mr.V.Sundareswaran ,Advocate, SR.No.15112

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vsn(co)
pmk.7.4.2015