IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.6948 of 2015

M/s.Sri Krishna Electricals Plumbing,
rep.by its Proprietor Mr.Hemaram,
No.15, Kamaraj Neduchalai,
Perungulathur,
Chennai - 600 063. ... Petitioner

Vs

The Commercial Tax Officer,
Tambaram Assessment Circle,
No.19A, Sivashanmugam Road,
West Tambaram,
Chennai - 600 045. .... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India seeking for the relief of issuance of a writ of ceriorari to call for the records of the respondent in TIN/33790885461/2012-13, quash the impugned proceedings dated 12.02.2015 as ultra vires of the provisions of the Tamilnadu Value Added Tax Act, 2006 and being without jurisdiction.

For Petitioner : Mr.V.Sundareswaran

For Respondent : Mr.Kanmani Annamalai,AGP (Taxes)

O R D E R

The petitioner has filed this writ petition seeking for the relief of issuance of a writ of ceriorari to call for the records of the respondent in TIN/33790885461/2012-13, quash the impugned proceedings dated 12.02.2015 as ultra vires of the provisions of the Tamilnadu Value Added Tax Act, 2006

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

> "(4) (a) Notwithstanding anything contained in sub-section (2), but subject to the provisions of sub-section (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 30th 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 gods 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 by the petitioner to the tune of Rs.47,05,257/-. 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 the Sales Tax turnover alone for the purpose of liability under section 3(4) of the Tamil Nadu Value Added Tax Act, 2006.

4. Heard the learned counsel appearing on either side.

5. In the light of the above provisions under Section 3(4) of the Tamil Nadu Value Added Tax Act, 2006, as the sales of the petitioner are less than Rs.50,00,000/-, the impuged order is liable to be set aside. Accordignly, the writ petition is allowed and the impugned order is set aside. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
The Commercial Tax Officer,
Tambaram Assessment Circle,
No.19A, Sivashanmugam Road,
West Tambaram,
Chennai - 600 045.

1 cc to Spl.Government Pleader,(Taxes)Sr.No.15686
High Court, Chennai -104

1 cc to Mr.V.Sundaresaravan ,Advocate, SR.No.15847

W.P.No.6948 of 2015

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pmk.7.4.2015