

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2015

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.8208 of 2015

and

M.P.No.1 of 2015

M/s.Select & Co.,
represented by its Proprietor
Mr.S.Kumarakrishnan
No.B, 6 & 7, Venkatesha Agraharam,
Mylapore, Chennai - 600 004. ... Petitioner

vs.

The Commercial Tax Officer,
Harbour Assessment Circle,
No.116, Angappa Naicken Street,
2nd Floor, Chennai - 600 001. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari to call for the records of the respondent in TIN/ 33570000069/2010-11 dated 12.02.2015 and quash the same as ultravires of section 3(4) of the Tamil Nadu Value Added Tax Act, 2006 and being without jurisdiction.

For Petitioner : Mr.V.Sundareswaran

For Respondent : Mr.Manoharan Sundaram,
Additional Government Pleader (Taxes)

ORDER

Petitioner has come forward with this Writ Petition seeking to quash the proceedings of the respondent in TIN/33570000069/2010-11 dated 12.02.2015.

2. For the sake of convenience, section 3(4) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as '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 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.49,66,547/-. In view of section 3(4)(a)(ii) of the Act 2006 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 2006. The statute speaks about the Sales Tax turnover alone for the purpose of liability under section 3(4) of the Act 2006.

4. Learned Additional Government Pleader contended that the petitioner has got alternative remedy of filing appeal under section

51 of the Act 2006 and this Court need not exercise its extraordinary jurisdiction to interfere with the order passed.

5. The provisions of section 3(4) of the Act 2006 is very clear. When the sales had been done only to the tune of Rs.49,66,547/-, which is less than Rs.50,00,000/=-, this Court finds some force in the contention of the petitioner.

This Writ Petition is allowed and the impugned order is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

The Commercial Tax Officer,
Harbour Assessment Circle,
No.116, Angappa Naicken Street,
2nd Floor, Chennai - 600 001.

+1 cc to Mr.V.Sundareswaran, Advocate, SR.16311

+1 cc to Spl.Government pleader, SR.16535.

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