IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.3.2016

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Writ Petition No.17942 of 2008

M/s.V.O.C.Park Canteen, rep.by
K.Thirumurthy, husband and legal
heir of T.Rajalakshmi (deceased)
Proprietrix, Coimbatore-18. ... Petitioner

Vs

1. Tamilnadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore-18.

2. The Appellate Assistant Commissioner of Commercial Taxes (Main), Coimbatore.

3. The Commercial Tax Officer, P.N.Palayam Assessment Circle, Coimbatore. ... Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of the first respondent in his order in Coimbatore Tribunal State Appeal No.75/02 dated 19.3.2008 and quash the same.

For Petitioner : Mrs.R.Hemalatha

For Respondents 2 & 3 : Dr.Anita Sumanth,
Special Government Pleader

ORDER OF THE COURT WAS MADE BY V.RAMASUBRAMANIAN,J

This writ petition arises out of an order passed by the Tamil Nadu Sales Tax Appellate Tribunal, setting aside the order of the First Appellate Authority and restoring the order of the Assessing Officer.

2. Heard Mrs.R.Hemalatha, learned counsel for the petitioner and Dr.Anita Sumanth, learned Special Government Pleader appearing for respondents 2 and 3.

3. The petitioner is a dealer, having business activities in two places, one under the name of VOC Park Canteen and another as a star hotel. The dealer has one single registration number.

4. However, in respect of one turnover that related to star hotel, the dealer paid tax at the rate of 8% and in respect of the turnover that related to VOC Park Canteen, the dealer originally claimed exemption, but subsequently paid 2% under Section 3D after the turnover exceeded Rs.25 lakhs. The Assessing Officer clubbed the turnover of both units together to arrive at the total turnover and demanded tax at the higher rate under Section 3(2). The Appellate Commissioner set aside the order of the Assessing Officer. The appeal filed by the Department was allowed by the Tribunal, forcing the dealer to come up with the above writ petition.

5. The expression 'total turnover' is defined in Section 2 (q) of the Tamil Nadu General Sales Tax Act, 1959, which is as follows :

> "'Total turnover' means the aggregate turnover in all goods of a dealer at all places of business in the State, whether or not the whole or any portion of such turnover is liable to tax."

6. Though the dealer was running two units, both of them had a common registration number. Therefore, there is no way the turnover could be segregated for the purposes of applying different taxing provisions. Consequently, we find nothing wrong with the order of the Tribunal.

7. Accordingly, the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

RS

To

1.The Tamilnadu Sales Tax Appellate
Tribunal (Additional Bench),
Coimbatore-18.

2.The Appellate Assistant Commissioner
of Commercial Taxes (Main),
Coimbatore.

3.The Commercial Tax Officer,
P.N.Palayam Assessment Circle,
Coimbatore.

4.The Section Officer,
VR Section,
High Court, Madras. [01/06/2016]

+1cc to Mrs.R.Hemalatha, Advocate, S.R.No.13168
+1cc to the Special Government Pleader(T), S.R.No.13402

WP.No.17942 of 2008

KK(CO)
CA(07/04/2016)