IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.17483 of 2014 & M.P.No.1 of 2014

M/s.Chellamani & Co.,
rep. By its Partner,
18-A (New No.53A),
Nelson Manickam Road,
Chennai-600 094. ... Petitioner

Vs.

The Assistant Commissioner (CT),
Vadapalani I Assessment Circle,
Chennai. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the respondent in proceedings TIN.33851460250/2007-08 and quash the order dated 19.06.2014 passed therein.

For Petitioner : Mr.P.V.Sudakar

For Respondents : Mr.S.Kanmani Annamalai,
Additional Government Pleader

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ORDER

Heard Mr.P.V.Sudakar, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent and perused the materials placed on record including the common counter affidavit filed by the respondent.

2.The petitioner is aggrieved by an order of assessment dated 16.06.2014, passed by the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the year 2006-07. In respect of the petitioner's sister concern viz., M/s.George Enterprises, identical orders were passed by the respondent, which were put to challenge in W.P.Nos.15999 to 16001 of 2014 and the said writ petitions were disposed of by a common order dated 07.10.2016. The operative portion of the order reads as follows:

"3. On a perusal of the impugned proceedings, it is evidently clear that the same have been passed after affording reasonable opportunity to the petitioner to submit objections to the proposal given in the notices dated 10.08.2010; 22.12.2009 & 08.02.2010 respectively and after affording an opportunity of personal hearing. The impugned orders of assessment are speaking orders and reasons have been assigned therein.

4. In the grounds raised in the Writ Petitions, apart from stating the legal provisions, more particularly with reference to Section 19(20) of the TNVAT Act, the petitioner would state that the assessing officer failed to note that the petitioner's selling price for all the goods purchased from the respective vendors (who have issued the credit not for discount as above) is more than the price charged by the vendors for the respective goods. It is further contended that there is absolutely no iota of proof that the petitioner has sold the goods at a price lower than its purchased price so as to embark on a revision of assessment. Further, it is contended that the respondent has failed to understand that reimbursement of expenses incurred by the petitioner for promotion of the vendor's goods through advertisement, stalls in exhibition etc., has nothing to do with the purchase price or selling price of the goods and that they are not liable for tax. However, the petitioner would contend that method and manner of giving discount is relevant in deciding the claim of nature of discount.

5. It is seen that the Hon'ble Supreme Court in Jayam & Co. vs. Assistant Commissioner and another (Civil Appeal Nos.8070-8073 of 2016), dated 05.08.2016, while upholding the vires of Section 19(20) of the Tamil Nadu Value Added Tax Act, 2006, has held that it can be given only prospective effect and not retrospective effect from January 2007. The operative portion of the order reads as follows:

> "18. When we keep in mind the aforesaid parameters laid down by this Court in testing validity of retrospective operation of fiscal laws, we find that the amendment in-question fails to meet these tests. The High Court has primarily gone by the fact that there was no unforeseen or

unforeseeable financial burden imposed for the past period. That is not correct. Moreover, as can be seen, sub-section (20) of Section 19 is altogether new provision introduced for determining the input tax in specified situation, i.e., where goods are sold at a lesser price than the purchase price of goods. The manner of calculation of the ITC was entirely different before this amendment. In the example, which has been given by us in the earlier part of the judgement, 'dealer' was entitled to ITC of Rs.10/- on re-sale, which was paid by the dealer as VAT while purchasing the goods from the vendors. However, in view of Section 19(20) inserted by way of amendment, he would now be entitled to ITC of Rs.9.50. This is clearly a provision which is made for the first time to the detriment of the dealers. Such a provision, therefore, cannot have retrospective effect, more so, when vested right had accrued in favour of these dealers in respect of purchases and sales made between January 01, 2007 to August 19, 2010. Thus, while upholding the vires of sub-section (20) of Section 19, we set aside and strike down Amendment Act 22 of 2010 whereby this amendment was given retrospective effect from January 01, 2007.

19. Appeals are partially allowed to the aforesaid extent. No order as to costs."

6. In the light of the above, since it is stated that the only issue involved in the impugned assessment orders is on account of the applicability of Section 19(20) of the TNVAT Act, this Court is of the view that the assessments can be re-done by the assessing officer, after taking note of the decision of the Hon'ble Supreme Court.

7. Accordingly, the writ petitions are allowed and the impugned assessment orders are set aside and the matter is remanded to the respondent for fresh consideration and the pre-assessment notices stand revived and the respondent is directed to afford an opportunity of personal hearing to the petitioner, apply the decision of the Hon''ble Supreme Court in Jayam & Co vs. Assistant Commissioner & another, referred

to supra, and re-do the assessments in accordance with law. No costs. Connected miscellaneous petitions are closed."

3.On a perusal of the impugned proceedings, it is seen that it is identical to that of the proceedings, which were subject matter of challenge in the cases filed by M/s.George Enterprises. Therefore, following the decision of the Hon'ble Supreme Court in the case of Jayam & Co. vs. Assistant Commissioner and another (Civil Appeal Nos.8070 to 8073 of 2016), dated 05.08.2016, this writ petition is allowed the impugned order is set aside and the matter is remanded to the respondent for fresh consideration and the pre-assessment notice stands revived and the respondent is directed to afford an opportunity of personal hearing to the petitioner, apply the decision of the Hon'ble Supreme Court in Jayam & Co vs. Assistant Commissioner & another, (supra), and re-do the assessment in accordance with law. No costs. Connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

abr

To

The Assistant Commissioner (CT),
Vadapalani I Assessment Circle,
Chennai.

W.P.No.17483 of 2014

RRK(11/01/2018)