In the High Court of Judicature at Madras

Dated : 03.11.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.27985 of 2017 & WMP.No.30026 of 2017

M/s.A.S.Leathers, rep.by its
Prorprietor Mr.Shaik Adam ...Petitioner

Vs

1. The Commercial Tax Officer,
   Periamet Assessment Circle,
   No.10, I Floor, Palaniappa
   Maligai, Greams Road, Chennai-6.

2. The State of Tamil Nadu, rep.by
   its Secretary to Government,
   Commercial Taxes & Registration
   Department, Fort.St.George,
   Chennai-9. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the first respondent in TIN/33760420896/2014-15 dated 16.3.2017 and quash the same as illegal, unreasonable, arbitrary and confiscatory in nature and being contrary to the very provisions of the Scheme of the Value Added Tax more particularly in view of the Amendment (Act No.5) of 2015 by substituting Section 19(2)(v) and omitting Proviso to Section 19 (2)(v) of the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner : Mr.V.Sundareswaran
For Respondents : Mr.S.Kanmani Annamalai, AGP

ORDER

Heard both.

2. The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006. In this writ petition, the petitioner challenged an assessment order dated 16.3.2017 under the provisions of the said Act for the year 2014-15.

3. The petitioner, if aggrieved, should have filed an appeal before the First Appellate Authority as against the impugned order, which remedy, the petitioner has not exhausted. An

appeal, at this stage, would be clearly time barred. That apart, the petitioner did not care to respond to the revision notice issued by the respondent dated 12.8.2016. The respondent had given sufficient time and as the petitioner had not responded to the revision notice, the respondent passed the impugned order. Therefore, no fault can be attributed to the respondent in completing the assessment in such a manner.

4. The learned counsel for the petitioner, before advancing the arguments on the facts of the case, has placed legal submissions before this Court. It is submitted that the present Section namely Section 19(2)(v), as it stood before substitution since 2007, was against the Fundamental Right guaranteed by The Constitution of India. It is also submitted that the Amendment Act, 2015 by simultaneous omission of the Proviso and substitution of Section 19(2)(v) conferring right to avail the input tax credit on all inter-State sales under Sections 8(1) and 8(2) of the Central Sales Tax Act, 1956, clears the intention of the second respondent to fall in line with the Committee's decision taken in the year 2005 as in the other States. It is further submitted that the respondents ought to have considered the fact that by omitting the Proviso and simultaneously substituting Section 19(2)(v), the reversal of the input tax credit cannot be reversed as assumed by the respondents.

5. In this regard, the learned counsel has referred to the decision of a learned Single Judge of this Court in the case of Sakthi Masala Private Limited Vs. AC (CT), Perundurai Assessment Circle [reported on (2013) 64 VST 385].

6. This decision has been referred to, to support the argument that the word 'substitution' would mean what is substituted will stand substituted from the inception. Whereas 'insertion' and 'addition' would come into play on the relevant date. That is to say, 'insertion' and 'addition' are on the date of Amending Act 32/2008 whereas substitution is to Act 32/2006 and will have the effect from 01.1.2007 when Act 32/2006 came into force.

7. In my considered view, this contention cannot be raised before this Court for the first time, as the petitioner failed to raise the same before the Assessing Officer. In an assessment proceedings, it is always open to the petitioner to raise all the issues, both factual and legal. The petitioner failed to do so. One more aspect, which has to be borne in mind is that Section 19(2))(v) of the State Act was held to be unconstitutional by the decision of this Court in the case of Everest Industries Limited Vs. State of Tamil Nadu [reported in (2017) 100 VST 158]. As against the said decision, the State

preferred an appeal in W.A.No.1260 of 2017 and the Hon'ble Division Bench of this Court granted stay of the order passed in that writ petition. There has also been a direction to tag all the writ petitions along with the said writ appeal.

8. The learned counsel for the petitioner would submit that the contention raised by the petitioner in this writ petition with regard to the effect of substitution of a provision in the Statute was not the subject matter of the decision in the case of Everest Industries Limited.

9. Considering the facts and circumstances of the case and taking note of the fact that the petitioner is a small dealer, this Court is inclined to give one more opportunity to the petitioner, however, subject to a condition.

10. Accordingly, the writ petition is disposed of with a direction to the petitioner to pay 15% of the disputed tax within a period of three weeks from the date of receipt of a copy of this order. If the petitioner complies with the said condition, they will be entitled to treat the impugned order as a show cause notice and submit their objections within a period of seven days therefrom. On receipt of the objections, the first respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law. It is needless to add that the benefit of this order will not enure to the petitioner if the petitioner fails to comply with the condition of payment of 15% of the disputed tax within the time stipulated. No costs. Consequently, the above WMP is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To
1. The Commercial Tax Officer,
Periamet Assessment Circle, No.10, I Floor,
Palaniappa Maligai, Greams Road, Chennai-6.

2. The Secretary to Government of Tamil Nadu,
Commercial Taxes & Registration Department,
Fort.St.George, Chennai-9.

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.78362

WP.No.27985 of 2017&
WMP.No.30026 of 2017

MG(CO)
CS/21/11/17