

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.28478 of 2008

M/s.Sri Murugan Agency,  
Salem Main Road,  
Sellappampatty, Namakkal District. .... Petitioner

Vs.

The Commercial Tax Officer (FAC),  
Namakkal (Rural) Asst Circle,  
Office of the Assistant Commissioner (CT),  
Namakkal (Rural) Asst Circle, Namakkal. .... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the impugned notice issued by the respondent in TIN No.33393101840/2007-08 dated 20.10.2008 and quash the same as issued without authority of law and also against the provisions of the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner : Mr.P.Rajkumar  
For Respondent : Mr.S.Kanmani Annamalai,  
Additional Government Pleader

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O R D E R

Heard Mr.P.Rajkumar, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent.

2.The petitioner, who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short "TNVAT Act"), is aggrieved by a notice dated 20.10.2008. In the said notice, the respondent stated that the petitioner had filed Form K return for the year 2007-08, up to December 2007, when the turnover was Rs.49,86,142/-. Subsequently, for the months of January 2008, February 2008 and March 2008, the petitioner filed Form I returns for Rs.10,04,720/-. The respondent has verified the

Form I returns applying Section 3(4)(b) of the TNVAT Act, and granted the benefit of input tax credit for a period of 90 days and directed the petitioner to remit the balance value added tax of Rs.3,32,294/-, along with penalty at 11.4%. The impugned notice is bad in law for several reasons.

3.Firstly, the petitioner had no opportunity to put forth his objections, such demand has been straightaway issued without any show cause notice.

4.Secondly, the respondent has referred to Section 3(4)(b) of the TNVAT Act, to substantiate his action. Admittedly, the said provision was introduced in the statute with effect from 17.06.2008, and on the date, when the petitioner filed revised return, the said provision was not available in the TNVAT Act. This is one more reason to hold that the impugned notice is bad in law.

5.The next and most important question would be whether the petitioner can be denied input tax credit for the period from April 2007 onwards and whether the respondent was right in restricting it for a period of 90 days, since I have already held that Section 3(4) of the TNVAT Act, would have no application to the instant case. The question of restricting the input tax credit for 90 days is incorrect. If such is the situation, it goes without saying that the petitioner would be entitled to input tax credit for the entire period, as the petitioner has paid higher rate of tax. This very issue has been answered by this Court in the case of C.K.G. Agencies vs. Asst. Commissioner (CT), reported in (2012) 54 VST 501 (Mad). The operative portion of the order is as follows:

"The petitioner herein opted to pay compounding tax as per section 3(4) of the Tamil Nadu Value Added Tax Act, 2006, as the assessee expected the turnover for the year 2007-08 as between Rs. 10 lakhs and Rs. 50 lakhs. The petitioner filed the monthly returns in form K disclosing the turnover and corresponding tax at 0.5 per cent. It is stated that the petitioner's turnover, however, exceeded Rs. 50 lakhs and hence, not eligible for compounded rate of tax at 0.05 per cent. The petitioner filed the form I monthly returns from April, 2007 to March, 2008 by taking credit of the tax paid on the purchases during the relevant assessment year 2007-08 and after adjusting the input-tax

credit, it paid the tax under section 3(2) of the Tamil Nadu Value Added Tax Act, 2006. On December 18, 2009, the respondent determined the total and taxable turnover at Rs. 57,92,100 by accepting the turnover reported by the petitioner, but took the input-tax credit for the month of March, 2008 alone. The petitioner's grievance is that the said order is contrary to the circular issued by the Commissioner dated August 29, 2007, wherein, it is clarified that if the turnover of the assessee exceeded Rs. 50,00,000 in the middle of the year, then the assessee would not be assessed at the compounded rate of tax under section 3(4) of the Tamil Nadu Value Added Tax Act, 2006 and he has to pay higher rate of tax and eligible for input-tax credit for the purchases made from the beginning of the year. The said clarification given in the case of individual assessee is applicable to the case of the petitioner also. Consequently, the order suffered an illegality. The petitioner made a representation by way of rectification petition on February 9, 2010, pointing out to the clarification dated August 29, 2007 and requested the respondent to cancel the demand. By proceedings dated February 23, 2010, the respondent rejected the prayer by stating that it is open to the petitioner to get necessary relief from the appropriate forum against the order passed by the assessing authority. The petitioner submits that having regard to the clarification given by the Commissioner, which is binding on the assessing officer, once the petitioner crosses the turnover of Rs. 50,00,000, he is eligible for the benefit of input-tax credit. It is not denied by the respondent that the petitioner had paid tax at four per cent and 12.5 per cent for every month as per section 3(2) of the Tamil Nadu Value Added Tax Act, 2006.

2. The learned counsel appearing for the petitioner pointed out to section 3(4) of the Tamil Nadu Value Added Tax (Second Amendment) Act, 2008 to substantiate his case as regards the availing of input-tax credit in respect of turnover exceeding Rs. 50,00,000 and the proviso introduced only under the Tamil Nadu Act 49 of 2008, that the said proviso has no application

to the present case. Hence, the petitioner is entitled to have the benefit of input-tax credit, once the turnover exceeds Rs. 50,00,000 limit. Going by the Commissioner's clarification, the benefit of input-tax credit has to be extended to the assessee like the petitioner, the moment the petitioner's turnover exceeded Rs. 50,00,000 and that he would not be eligible to be assessed under section 3(4) of the Tamil Nadu Value Added Tax Act.

It is seen that in the rectification petition filed, the petitioner pointed out to the turnover of the year crossing Rs. 50,00,000 and that the assessment made by the officer was going against the Commissioner's clarification dated August 29, 2007 and hence, the same was liable to be set aside. On the admitted facts as to the petitioner's turnover is more than Rs. 50 lakhs, the Commissioner's clarification is binding on the assessing authority, it is necessary that the assessment has to be reviewed in accordance with law as well as the clarification. It however has to be noted that in the rectification petition filed by the petitioner, there are hardly any details as to the month when the turnover exceeded Rs. 50,00,000 limit for the purpose of granting the benefit of input-tax credit.

In the circumstances, the order passed by the respondent is set aside and the petitioner is hereby directed to furnish the details of the turnover crossing Rs. 50,00,000. On such furnishing of the details, the respondent shall take into account the Commissioner's clarification and pass orders in accordance with law.

With the above observation, the writ petitions are disposed of. No costs. Consequently, connected MPs are closed."

6.The above decision would squarely apply to the facts of the case, wherein it has been held that the assessee was entitled to avail benefit of input tax credit, once the turnover exceeds Rs.50,00,000/- limit. The Court also took note of a circular issued by the Commissioner dated 29.08.2016, wherein it is clarified that if the turnover of the assessee exceeds Rs.50,00,000/- in the middle of the year, then the assessee

would not be assessed at the compounded rate of tax under Section 3(4) of the TNVAT Act and he has to pay higher rate of tax and eligible for input tax credit for the purchases made from the beginning of the year.

7. In the light of the above, the impugned notice is held to be bad in law and accordingly, set aside. In the result, the writ petition is allowed and the impugned order is quashed. No costs.

Sd/-  
Assistant Registrar(CS IV)  
//True Copy//  
Sub Assistant Registrar

abr

To

The Commercial Tax Officer (FAC),  
Namakkal (Rural) Asst Circle,  
Office of the Assistant Commissioner (CT),  
Namakkal (Rural) Asst Circle, Namakkal.

+1 cc to M/s.P.Rajkumar Advocate sr 78124  
+1 cc to Special Govt Pleader sr 78244

W.P.No.28478 of 2008

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