IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 08.06.2018
CORAM:
THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM
W.P.Nos.11588 to 11590 of 2018
W.M.P.Nos.13560 to 13562 of 2018

Sri Veeramathi Tyres,
Rep. by its Proprietor,
M.Chinnasamy,
No.6/1194-95, M.C.Complex,
Bhavani Main Road,
Kalingarayanpalayam,
Erode-638 301. ...Petitioner in all Petitions

Vs.

The State Tax Officer,
Chithode Assessment Circle,
Erode. ...Respondent in all Petitions

Prayer: Writ petitions filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records on the file of the respondent in TIN:33213062169/2010-11, 33213062169/2011-12 and 33213062169/2012-13, respectively dated 22.03.2018, and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan in all WPs.

For Respondent : Ms.G.Dhana Madhri, in all WPs. Government Advocate

COMMON ORDER

Heard Mr.R.Senniappan, learned counsel for the petitioner and Ms.G.Dhana Madhri, learned Government Advocate for the respondent.

2. With the consent on either side, the writ petitions are taken up for final disposal.

3. The petitioner is aggrieved by the re-opening of the assessment for the assessment years 2010-11, 2011-12, and 2012-13 under the provisions of Tamil Nadu Value Added Tax Act, 2006 (for short "TNVAT Act"). The reason for re-opening is that the turn over of the petitioner for the assessment year 2009-2010 had exceeded Rs.50 lakhs. The respondent has relied upon Section 3(4)(b) of the TNVAT Act to justify the

re-opening. The Proviso states that "Provided that such dealer whose turnover relating to taxable goods has reached rupees fifty lakhs during the previous year shall not be entitled to exercise such option for subsequent years". A plain reading of the above provision presupposes that a dealer should have exercised option for a particular assessment year, during which, the turn over should have been exceeded rupees fifty lakhs and in such event, a dealer will be dis-entitled from exercising such option for the subsequent years.

4. The petitioner's case is that for the assessment year 2009-10, they did not exercise option for payment of compounded rate of tax, but filed Form I return and paid tax. For the three subsequent years namely 2010-11, 2011-12 and 2012-13, the petitioner's turn over being less than rupees fifty lakhs, they exercised option and filed Form K return. Thus, the respondent re-opened the assessment for three years namely 2010-11, 2011-12 and 2012-13, they should be able to show that the petitioner/dealer had exercised option under Section 3(4) of the TNVAT Act for the assessment year 2009-2010. Admittedly, no record has been placed before this Court to show that such option was exercised by the dealer for the assessment year 2009-10. On the contrary, the admitted fact shows that the dealer filed Form I return for the assessment year 2009-10. If that be the factual position, then the petitioner's case is fully supported by the decision in the case of Sinetech v. Commercial Tax Officer, Korattur Assessment Circle [2008] 15 VST 398 (Mad). Though the said decision arose under the provisions of the Tamil Nadu Sales Tax Act, it will be applicable to the provisions under the TNVAT Act, which is also para materia. The Court held that the question of revising the compounding order did not arise especially when the petitioner had exercised the option for payment of tax at the compounded rate and the petitioner was also made to pay tax at 4 per cent on the entire contract value and Section 16 of the General Sales Act (para materia to Section 27 of TNVAT Act) was not intended to withdraw the option exercised by the petitioner/dealer. The said decision in the case of Sinetech (cited supra) was confirmed by the Division Bench as the appeal filed by the Revenue in W.A.No.1536 of 2010 was dismissed by judgment dated 04.07.2017. In the light of the above, the impugned proceedings have to be held to be unsustainable in law.

5. For all the above reasons, the writ petitions are allowed. The impugned orders are quashed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

svki

To

The State Tax Officer,
Chithode Assessment Circle,
Erode.

+1cc to Mr.R.Senniappan, Advocate Sr.No.36453
+1cc to Special Government Pleader SR.No.36327

sm:20.6.2018

W.P.Nos.11588 to 11590 of 2018