BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **09.01.2018**
CORAM:
THE HONOURABLE MR.JUSTICE **M.SATHYANARAYANAN**
and
THE HONOURABLE MRS.JUSTICE **R.HEMALATHA**

W.A.(MD)No.699 of 2011
and
M.P.(MD)No.1 of 2011

Tvl.Palani Tamilnadu Irumbi Vanigam,
by its Proprietor, C.Subramanian,
No.164, Dindigul Road, Palani. .. Appellant/Petitioner

Vs.

The Assistant Commissioner (CT)-II(FAC),
Palani. .. Respondent/Respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order passed by this Court in W.P.(MD)No.7565 of 2011, dated 08.07.2011.

Prayer in WP(MD). 7565/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records on the file of the respondent in Tin No. 33185361231/2007-08 dated 25.05.2011 and quash the same as illegal and contrary to the provisions of the Tamil Nadu Value Added Tax Act, 2006 in so far as the same has been passed without grant of input tax credit to petitioner for the entire year which they are entitle to as per the provisions of the Tamilnadu Value Added Tax Act 2006 and further direct the respondent to give input tax credit and adjustiments to the petitioner for the entire year as per the detailes furnished by the petitioner in their statement filed along with the revised returns on 22.04.2008 .

For Appellant : Mr.A.Chandrasekaran

For Respondent : Mr.M.Murugan
Government Advocate

JUDGMENT

[Judgment of the Court was made by **M.SATHYANARAYANAN, J.**]

The assessee/writ petitioner is the appellant.

2. The writ petitioner/assessee made a challenge to the order dated 25.05.2011, passed by the respondent with regard to the revision of assessment under Section 27 of the Tamil Nadu Value Added Tax Act 2006 (in short "TNVAT") in determining the total and taxable turnover to the tune of Rs.58,37,819/- and the claim of tax along with the penalty to the tune of Rs.7,50,796/- by filing writ petition in W.P.(MD)No.7565 of 2011.

3. A Single Bench of this Court, vide the impugned order, dated 08.07.2011, has dismissed the writ petition, on the ground of availability of alternative remedy in the form appeal and challenging the legality of the said order, the present Writ Appeal is filed.

4. The learned Counsel appearing for the appellant/writ petitioner would contend that admittedly the petitioner has remitted the tax in Form-I on 22.04.2008 and sub-section 4 of Section 3 of TNVAT came to be substituted by Tamil Nadu Amendment Act 49 of 2008 with effect from 18.06.2008 and the said fact was also acknowledged by the respondent in the notice dated 11.12.2009. However, the respondent, without taking note of the reply dated 20.12.2009, submitted by the appellant/writ petitioner, has issued the pre-revision notice, dated 31.032011 and it is followed by the impugned order, dated 25.05.2011 determining the total taxable turn over along with tax and penalty.

5. The primordial submission made by the learned Counsel appearing for the appellant/writ petitioner is that though as contemplated under Section 34(b) of the TNVAT Act, the appellant/writ petitioner did not inform the assessing Authority in writing within 7 days from the date on which his turn over exceeded Rupees Fifty Lakhs, the fact remains that even prior to the said amendment, he has remitted the tax in Form -I on 22.04.2008 and however, without taking note of the same, the input tax credit claimed by him also said to be negatived and the same is unjustified in law as well as in equity.

6. The attention of this Court was also invited to the compounding scheme - VAT Cell/41922/2007 (VCC No.1161), dated 29.08.2007 downloaded from www.tnvat.gov.in, wherein a clarification has been issued in respect of one Mr.Nanjundamoorthy, Sundaram Complex, 19-F, Co-op. Colony, Mettupalayam, Coimbatore District, wherein it is sated many other things. The said assessee is eligible for input tax credit for his purchases made from the beginning of the year, but the time barred sales tax credit to stock held as on 31.12.2006 cannot be claimed.

7. It is also the submission of the learned Counsel appearing for the appellant/writ petitioner that the said

clarification has also been taken cognizance by a Single Bench of this Court, while disposing the writ petitions in W.P.Nos.6255 and 6256 of 2010, vide a common order, dated 22.04.2010, wherein it is held that the above said circular is binding on the assessing Authority and therefore, the assessment has to be reviewed in accordance with law as well as the clarification. In sum and substance, it is the submission of the learned Counsel appearing for the appellant/writ petitioner that in the light of the said clarification coupled with the common order dated 22.04.2010, made in W.P.Nos.6255 and 6256 of 2010, the petitioner is entitled to the benefit of the input tax credit and prays for appropriate orders.

8. Per contra, Mr.M.Murugan, learned Government Advocate appearing for the respondent would submit that as per the substitution made to Section 34 of the TNVAT Act under the Tamil Nadu Act 49 of 2008 with effect from 18.06.2008, the appellant/writ petitioner is under obligation to inform the assessing Authority in writing within 7 days from the date on which, the turn over reached Rupees Fifty Lakhs and admittedly, he did not inform the same within the time stipulated and as a natural corollary, the assessee can be given the input tax credit within 90 days from the date of receipt of the said communication and since it has not been done, the revised assessment order came to be passed and would further contend that the learned Single Judge has also taken note of the effective alternative remedy available to the appellant/writ petitioner and rightly directed him to do so and hence, prays for dismissal of the writ appeal.

9. This Court has considered the rival submissions and perused the materials placed before this Court as well as the circular/ clarification dated 29.08.2007 and the common order, dated 22.04.2010, made in W.P.Nos.6255 and 6256 of 2010.

10. It is not in serious dispute that the turn over was exceeded Rupees Fifty Lakhs even during the year 2007 and the petitioner has submitted a letter along with Form - I on 22.04.2008, which is prior to the substitution of Section 34 of TNVAT Act under Tamil Nadu Act 49 of 2008 with effect from 18.06.2008.

11. Admittedly and no doubt, after the said substitution, the petitioner did not inform the said fact within 7 days as contemplated under Section 3(4) of the TNVAT Act. In a case of similar in nature, a clarification in VAT Cell/41922/2007 (VCC No.1161), dated 29.08.2007 has been issued with regard to the compounding scheme in respect of one Mr.Nanjundamoorthy, Sundaram Complex, 19-F, Co-op. Colony, Mettupalayam, Coimbatore District and as per the said clarification, the said assessee is eligible for input tax credit for his purchases made from the beginning of the year, but the time barred sales tax credit to stock held as on 31.12.2006 cannot be claimed.

12. At this juncture, it is relevant to extract the same:

" *Compounding Scheme*
VAT Cell/41922/2007 (VCC No.1161)
29/08/2007
[2007] 9 VST (Stat) 126C

VAT Cell/41922/2007 (VCC No/1161), dated 29.08.2007

Clarification under TNVAT Act, 2006 on "Compounding Scheme"

Thiru.Nanjudamoorthy, Sundaram Complex, 19-F, Co-op. Colony, Mettupalayam, Coimbatore District is hereby informed that if a dealer is paying tax under Section 3 (4) of the Act and in the middle of the year his turnover has crossed rupees fifty lakhs, then he will not be eligible for payment under Section 3(4) of the Act for the entire year, i.e., he has to pay tax at the higher rate on the sale in which he has collected tax at 0.5%. He is eligible for input tax credit for his purchases made from the beginning of the year. But the time barred sales tax credit relating to stock held as on 31.12.2006 cannot be claimed."

13. The said circular was also taken note of by the learned Single Judge, while disposing of the writ petitions in W.P.Nos.6255 and 6256 of 2010, dated 22.04.2010 - ***M/S C.K.G.Agencies, represented by its proprietrix Smt.Renukadevi, Coimbatore District Vs. the Commercial Tax Officer, now redesignated as the Assistant Commissioner (CT), Avinasi Assessment Circle, Avinasi, Coimbatore District*** and it is relevant to extract paragraph Nos.2, 3 and 4 of the said order.

"2. 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 eligible to be assessed under Section 3(4) of the Tamil Nadu Value Added Tax.

3.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 29.08.2007 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.

4.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."

14. In paragraph No.3 of the above said order, the learned Single Judge, after taking note of the said clarification, held that that it is binding on the assessing Authority and therefore it is necessary that the assessment has to be reviewed in accordance with law as well as the clarification.

15. In the considered opinion of this Court, the said judgment squarely applicable to the facts of this case.

16. In the result, the Writ Appeal is partly allowed and the order dated 08.07.2011 made in W.P.(MD)No.7565 of 2011 is set aside and the appellant/writ petitioner is directed to furnish the details of the turn over crossing of Rupees Fifty Lakhs along with supporting materials to the respondent within a period of four weeks from the date of receipt of a copy of this order and upon receipt of the same, the respondent shall take into consideration the said clarification and pass appropriate orders in accordance with law within a further period of eight weeks thereafter and communicate the decision taken to the appellant / writ petitioner. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

The Assistant Commissioner (CT)-II(FAC),
Palani.

+1cc to Mr.A.Chandrasekaran, Advocate Sr.No.41197
+1cc to The Spl.Government Pleader Sr.No. 41303

SSL

VB/SV/MMS/SAR2/30.01.2018/6P/4C

W.A.(MD)No.699 of 2011
and
M.P.(MD)No.1 of 2011
09.01.2018