BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **11.09.2018**
CORAM:
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.6471 of 2011
and
M.P.(MD).No.1 of 2011

M/s.Maruthi Auto Store,
rep. by its Proprietor,
V.Sivaraman,
162, 163, Panthadi 3rd Street,
Palace Road,
Madurai. .. Petitioner

Vs.

The Commercial Tax Officer,
Mahal Assessment Circle,
Madurai. .. Respondent

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records on the file of the respondent in TIN No.33975141431/2007-08, dated 07.10.2010 and quash the same as illegal, arbitrary and against law.

For petitioner : Mr.S.Karunakar

For respondent : Mr.D.Muruganandham,
Additional Government Pleader

ORDER

The petitioner is an assessee under the Tamil Nadu Value Added Tax Act, 2006. For the assessment year 2007-08, the petitioner had opted to pay tax at the rate of 0.5% under Section 3(4) of the TNVAT Act. Since the turnover exceeded Rs.50 lakhs, he had opted to switch over to Form-I, instead of Form-K and accordingly, he filed returns and paid tax. On scrutiny of the returns, the respondent had issued notice dated 14.09.2010 proposing to assess the entire sales of Rs.70,69,232/- at Rs.12.5% for the year 2007-08 and to fix an output tax of Rs.8,83,654/-. After receipt of notice, the petitioner requested time to file reply, vide his letter dated 05.10.2010. But, without considering the same and without providing an opportunity of personal hearing, the respondent has hurriedly passed the impugned order, dated 07.10.2010, confirming the proposal. Challenging the said order, the petitioner is before this Court.

2. The learned counsel appearing for the petitioner would submit that the petitioner effected second and subsequent sales of goods purchased from registered dealers within the State and had opted for assessment at the compounding rate under Section 3(4) of the TNVAT Act which has been provided with effect from 01.01.2007 and have been regularly filing monthly Form-K returns and paying compounded tax at 0.5% on the taxable turnover. The petitioner also had not collected any tax on the sales effected to the customers nor had claimed any input tax credit till then. During the middle of the above assessment, the taxable turnover exceeded Rs.50 lakhs and after duly intimating the same to the respondent, the petitioner filed Form-I returns from the month of December, 2007 onwards and paid tax. The said benefits was extended to small dealers with total turnover of Rs.50 lakhs from 01.01.2007 onwards for the turnover relating to taxable goods, instead of the total turnover under Section 3(1-A) of the TNVAT Act. As per the subsequent amendment, every registered dealer under TNVAT Act whose turnover relating to taxable goods on crossing Rs.50 lakhs, shall inform to the respondent in writing within 7 days from so reached. Such a dealer is liable to pay tax under Section 3(2) of the TNVAT Act on all his sales of Rs.50 lakhs and above for which he can avail the claim of Input Tax Credit. Since the amendment was given effect only from 18.06.2008, the application of the amendment provision for the earlier period ie., 2007-08 cannot be sustained and hence, the petitioner is entitled for the assessment under compounding rate of 0.5% on the sales turnover upto December 2007 and at 4% for the sales from 14.12.2007 to 31.03.2008 for the subsequent period after reaching Rs.50 lakhs. But the respondent has erroneously assessed 12.5% for the total turnover. Thus, he prayed to allow this writ petition.

3. Per contra, the learned Additional Government Pleader appearing for the respondent would submit that as per the substitution made to Section 3(4) of the TNVAT Act, the 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 ie. from 14.12.2007 and admittedly, he did not inform the same within the time stipulated and continue to file the monthly returns only in Form-K and thereby, he lost the chance of Input Tax Credit for the purchases of goods by him, immediately preceding 90 days from 14.12.2007. Thus, he prayed to dismiss this petition.

4. Heard the learned counsel appearing for both sides and perused the records carefully.

5. According to the petitioner, he availed the benefit of Section 3(4) of the TNVAT Act and paid returns in Form-I till reaching the sales turnover of Rs.50 lakhs ie., till 14.12.2007 and then, he filed Form-K returns by intimating the respondent, vide letter dated 03.01.2010 and paid tax. According to the

respondent, the petitioner has paid tax for the assessment year 2007-08 for the entire sales turnover only by filing Form-K returns and as he has not intimated in writing the respondent about exceeding sales turnover within 7 days from the date on which such turn over has reached Rs.50 lakhs, as per Section 3(4) of the TNVAT Act, he is liable to pay tax at 12.5% for the entire sales turnover.

6.Before amendment, Section 3(4) of the TNVAT Act reads as follows:-

> "3 (1)..... (4)Not withstanding anything contained in sub-section (2), but subject to the provisions of sub-section (1), every dealer, who effects second and subsequent sales of goods purchased within the State, whose total turnover relating to taxable goods, for a year, is less than rupees fifty lakhs, may, at his option, instead of paying tax under sub-section(2), pay a tax, for each year, on his total turnover at such rate not exceeding one percent, as may be notified (*) by the Government. Such option shall be exercised by the dealer within 30 days from the date of commencement of this Act:
>
> Provided that such dealer shall not collect any amount by way of tax or purporting to be by way of tax.
>
> Provided further that such dealer shall not be entitled to Input Tax Credit on goods purchased by him:
>
> Provided also that the dealer who purchased goods from such dealer shall not be entitled to Input Tax Credit on the goods purchased by him."

7. By the Tamil Nadu Ordinance No.1 of 2008, dated 17.06.2008, with effect from 18.06.2008, Section 3(4) of the Act was amended as follows:

> 3(4)(a)Notwithstanding anything contained in sub-section (2), but subject to the provisions of sub-section (1), every dealer, who effects second and subsequent sales of goods purchased within the State, whose turnover relating to taxable goods, for a year, is less than rupees fifty lakhs, may, at his option, instead of paying tax under sub-section (2), pay a tax, for each year on his turnover relating to taxable goods at such rate not exceeding one per cent, as may be notified by the Government. Such option shall be exercised by a dealer-

(i) who commences business, within thirty days from the date of commencement of the business;

(ii) whose turnover is below rupees fifty lakhs during the previous year, on or before the 30th day of April of the year for which he exercise such option;

(iii) for the year 2008-2009, within thirty days from the date of commencement of the Tamil Nadu Value Added Tax (Second Amendment) Ordinance, 2008;

Provided that such dealer shall not collect, any amount by way of tax or purporting to be by way of tax:

Provided further that such dealer shall not be entitled to Input Tax Credit on the goods purchased by him:

Provided also that the dealer who purchased goods from such dealer shall not be entitled to Input Tax Credit on the goods purchased by him.

3(4)(b) if the turnover, relating to taxable goods of a dealer paying tax under clause (a), in a year, reaches rupees fifty lakhs at any time during the year, he shall inform the Assessing Authority in writing within seven days from the date on which such turnover has so reached. (2) [Such dealer is liable to pay tax under Sub-Section (2) on all his sales of rupees fifty lakhs and above] and he is entitled to the Input Tax Credit on the purchases made from the date, and on the stock available with him the purchases of which he has been made within ninety days before the date, on which such turnover has reached rupees fifty lakhs:

Provided that such dealer whose turnover has reached rupees fifty lakhs during the previous year shall not be entitled to exercise such option for subsequent years.”

8. From the above, it is very clear that as per the amendment, on exceeding the sales turnover of Rs.50 lakhs, it has to be intimated to the respondent in writing within seven days from the date on which such turn over has so reached and such dealer has to pay tax under Sub-Section (2) on all his sales of rupees fifty lakhs and above. But, this amendment came into effect only from 18.06.2008. Even before the amendment the dealer has filed returns. Therefore, the impugned order cannot be sustained. However, as it is disputed by the respondent that the petitioner has not filed Form-I returns and he paid tax only at

0.5% by filing Form-K returns for the total taxable turnover, this Court is inclined to remit the matter back to the file of the respondent for fresh consideration.

9. In view of the above, the impugned order, dated 07.10.2010, is set aside and the matter is remanded back to the file of the respondent. The respondent is directed to consider the case of the petitioner based on his objections and apply the relevant provision of section 3(4) of the Act prevailing before the date of 18.06.2008 and give an opportunity of personal hearing to the petitioner and then, pass orders afresh on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.

10. This Writ Petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar(CS-I)

To
1.The Commercial Tax Officer,
Mahal Assessment Circle,
Madurai.

+1 CC To MR.S.KARUNAKAR, Advocate SR. NO. 83596
+1 CC TO The Special Government Pleader SR.NO. 84061

Order made in
W.P(MD)No.6471 of 2011
11.09.2018

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TR/SKN/SAR-I(24.10.2018)5P 4C