IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2019

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.Nos.4056 to 4062 of 2015
& M.P.Nos.1,1,1,1,1,1 and 1 of 2015

W.P.No.4056 of 2015:

M/s.Shri Selvi Associates,
Rep. by its Proprietrix
Tmt.S.Selvi ... Petitioner in all the WPs

Vs.

1. The Commercial Tax Officer,
Tambaram I Assessment Circle,
No.5, II Main Road, New Colony,
Chromepet, Chennai – 600 044.

2. The Commercial Tax Officer,
Pammal Assessment Circle,
No.32 & 33, Sripuram 2nd Street,
Chrompet, Chennai – 600 044. ... Respondents in all the WPs

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari to call for the records of the 2nd respondent in TIN/33320886350/2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 respectively quash the impugned proceedings dated 23.01.2015 as ultravires of the provisions of the Tamil Nadu Value Added Tax Act, 2006 and being without jurisdiction.

For Petitioner : Mr.V.Sundareswaran (in all WPs)
For Respondents: Mr.Mohammed Shaffiq,(in all WPs)
Special Government Pleader

COMMON ORDER

The petitioner is a dealer registered on the files of the respondent as an assessee in terms of the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'TNVAT Act') as well as under the Central Sales Tax Act, 1956 (in short 'CST Act'). It is a retailer in ice-creams purchased from local registered dealers and re-sold domestically. The petitioner had opted for the presumptive system of taxation in terms of Section 3(4) of the TNVAT Act that carves an exception to the regular system of taxation whereunder a return of turnover is filed by an assessee after claiming a deduction of the tax paid on purchases, i.e,. output tax minus Input Tax Credit (ITC).

2. The provisions of Section 3(4) read as follows:

> 3. Levy of Taxes on sales of goods.- (1)
>
> …………………….
>
> (4) (a) Notwithstanding anything contained in sub-section (2), but subject to the provisions of subsection (1), every dealer, who effects second and subsequent sales of goods purchased *[from the registered dealers] 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 [turnover relating to taxable goods] at such rate not exceeding one percent, as may be notified by the Government. Such option shall be exercised by the 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 30th day of April of the year for which he exercises such options;
>
> (iii) For the year 2008-09, within thirty days from the date of commencement of the Tamil Nadu Value Added Tax (Second Amendment) Act, 2008 (Tamil Nadu Act 49 of 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. The provision, as it stood at the relevant point in time, granted the benefit of presumptive rate, that is, a flat

rate of taxation without the botheration of a cumbersome computational methodology in respect of turnover that did not exceed a sum of Rs.50.00 lakhs.

4. A notice was issued by the respondent officer on 09.09.2009 wherein the Officer noted that the turnover of the assessee for the period 2007-08 had exceeded Rs.50.00 lakhs and thus the returns filed in Form K (as prescribed for presumptive tax returns) were incorrect. Since the petitioners' turnover exceeded Rs.50.00 lakhs, i.e., Rs.59,19,524/-, it was called upon to file a return in Form I. On 29.09.2009, the assessee responded reducing its turnover from a sum of Rs.59,19,524/- to Rs.48,69,428/- stating that the charges on delivery and labour would have to stand reduced from the turnover, as a consequence of which, the turnover would fall within the prescribed limit of Rs.50.00 lakhs. An order of assessment came to be passed on 19.07.2010 under Section 22(2) accepting the modification sought to turnover and assessing an amount of Rs.48,53,975/- presumptively. An excess of tax of Rs.5,327/- was determined, which the assessee undertook not to press for refund.

5. Thereafter on 19.11.2014, a notice for revision/re-assessment was issued seeking to revoke the option for compounding on the ground that verification of the monthly returns had revealed the total and taxable turnover to exceed a sum of Rs.50.00 lakhs and hence the assessee was not eligible to opt for the presumptive tax scheme. The petitioner was called upon to file objections, if any, to the said proposal that the option for the period 2007-08 be reversed and as a result thereof, the options exercised for the subsequent years, that is, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14, would also stand rejected in limine, in the light of the proviso introduced on 18.06.2008 to the Tamil Nadu Value Added Tax (Second Amendment) Act, 2008 to the effect that a dealer whose turnover in relation to taxable goods achieved the threshold of Rs.50.00 lakhs during a relevant year would not be entitled to seek presumptive taxation for any year thereafter. The proviso came into force with effect from 18.06.2008.

6. The petitioner filed objections reiterating again that the expenditure incurred on delivery and labour charges ought to have been reduced from the turnover as a result that the turnover returned would stand reduced to less than Rupees fifty lakhs. Upon consideration of the submissions of the petitioner, an order of assessment dated 23.01.2015 has come to be passed wherein the option for compounding has been rejected and the entire turnover brought to tax at the enhanced rate. Hence these Writ Petitions.

7. The petitioner places great reliance on a decision of the learned single Judge of this Court in the case of Sinetech V. Commercial Tax Officer, Korattur Assessment Circle, Chennai (15 VST 398) that has, according to it, been confirmed by the Division Bench in W.A.No.1536 of 2010 (order dated 04.07.2017). The learned single Judge had considered a challenge to a re-assessment in the context of an assessment completed earlier on presumptive basis and, while allowing the Writ Petition, relying on the judgement of the Supreme Court in the case of Deputy Commissioner of Commercial Taxes V. Devendran & Company (47 STC 264) confirmed in 103 STC 95, states at paragraph 9 as follows:

> . '9. The learned counsel also produced the work order issued by Indian Oil Corporation in favour of the petitioner, which was also submitted to the respondent. Therefore, the only question that remains for consideration is whether the respondent had power under section 16 of the TNGST Act to reopen the assessment on the basis of the judgment of the Supreme Court in State of Andhra Pradesh v. Kone Elevators (India) Ltd. [2005] 140 STC 22. The reliance placed upon the said judgment of the Supreme Court in Kone Elevators case 140 STC 22 is totally misconceived as in the present context, the petitioners have agreed to compound rate by paying the tax in terms of section 7C of the TNGST Act and also filed the returns in form A1. In such a case, the question of revising the compounding order does not arise especially when a dealer is exercising option in payment of tax at compounded rate and the petitioner was also made to pay tax at four per cent on the entire contract value. Section 16 of the TNGST Act is not intended to withdraw the said option exercised by the petitioner-dealer'.

8. The last sentence, as extracted above, forms the crux of the argument of the petitioner. Simply put, the argument is that there can be no re-assessment/revision of assessment contemplated in the case of presumptive assessments where the option exercised by the assessee in that regard had been accepted by the Department at the original instance.

9. Mr.Mohammed Shaffiq appearing for the respondents counters this proposition vehemently. He takes the Court through the scheme of Presumptive tax assessment as also re-assessment as well as the relevant statutory provisions to illustrate that there is really nothing in the provisions themselves that militate against a re-assessment being carried out in the case

of a presumptive assessment. In fact, both the Tamil Nadu General Sales Tax Act, 1959 (in short 'TNGST Act') as well as the TNVAT Act expressly provide for re-assessments/revision of assessments specifically in the context of the presumptive tax scheme itself. Section 27 and 28 to the extent they are relevant are extracted below:

> 27. Assessment of escaped turnover and wrong availment of input tax credit (1) (a) Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of sub-section (3), at any time within a period of [six years from the date of assessment], determine to the best of its judgment the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary.
>
> (b) Where, for any reason, the whole or any part of the turnover of business of a dealer has been assessed at a rate lower than the rate at which it is assessable, the assessing authority may, at any time within a period of [six years from the date of assessment], re-assess the tax due after making such enquiry as it may consider necessary.
>
> 28.Assessment of turnover not disclosed under compounding provisions.-- (1) Where for any reason, any part of the turnover of business of a dealer who has opted to pay tax under sub-section (4) of section 3 or section 6 or section 8 has escaped assessment from the tax, the assessing authority may, at any time within a period of [six years from the date of assessment] determine to the best of its judgment the turnover which has escaped assessment and re-assess the tax payable on the total turnover including the turnover already assessed under the said section.
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> (2) Before making the re-assessment under sub-section (1), the assessing authority may make such enquiry as it may consider necessary and give the dealer concerned a reasonable opportunity to show cause against such re-assessment.
>
> (3) The amount of tax already paid by the dealer concerned in pursuance of the option to compound under sub-section (4) of section 3 or section 6 or section 8 shall be adjusted towards the amount of tax due as the result of re-assessment under sub-section (1).

(4) The provisions of sub-sections (3) to (8) of section 27 shall, as far as may be, apply to reassessment under sub-section (1) as they apply to the reassessment of escaped turnover under sub- section (1) of section 27.

10. Moreover the phrase used in both Sections 27 and 28 of the TNVAT Act is 'for any reason' meaning that the ambit of the provision is wide.

11. In this connection, Mr.Shaffiq relies on the following judgments:

1. Maharajadhiraj Sir Kameshwar Singh V. State of Bihar [(1960) 1 SCR 332: AIR 1959 SC 1303: (1959) 37 ITR 388]
2. Union Leather Company V. JCTO [1985 SCC Online Mad 299: (1987) 66 STC 277]
3. Dinod Cashew Corporation V. The DCTO [(1986) 61 STC 1]
4. Yercaud Coffee Curing Works Ltd. V. The State of Tamil Nadu [(1977) 40 STC 531]
5. Surya Fertilisers and Chemicals V. The State of Tamil Nadu (And Other Cases) [(1977) 40 STC 538]
6. Sulochana Chandrakant Galande V. Pune Municpal Transport and Others (2010) 8 SCC 467

12. He points out that the scheme of presumptive taxation is an alternate methodology of assessment that may be opted for by an assessee. Having opted for the same, the assessee cannot exit as and when it chooses and must adhere to, and live by, its choice. The question of approbating and reprobating, once having opted for a presumptive scheme of taxation, is not envisaged within the Scheme itself. For this proposition, he relies on the following judgments:

1. The Commercial Tax Officer V. M/s.Sintech, [W.A. No.1536 of 2010, dt.04.07.2017]
2. Deputy Commissioner of Commercial taxes, Vellore V. Devandran & Co., [1980 SCC Online Mad 388: (1981) 47 STC 264].
3. State of Tamil Nadu V. Devandran & Company [(1996) 103 STC 95 (SC)]

13. He would state that the machinery to bring to tax the appropriate turnover, both in the regular as well as presumptive schemes of assessment have been provided for in the Act itself and this machinery must be put to full use to ensure that the specific scheme of taxation is given effect to in the most purposive, progressive and effective way. In this connection, he draws attention to the judgments of the Supreme Court in the case of i) Gurushahail Saigal V. Commissioner of Income Tax,

Punjab [AIR 1963 SC 1062 and ii) The State of Tamil Nadu V. M.K.Kandaswami and Others [(1957) 4 SCC 745].

14. In the case of Meenakshi V. State of Tamil Nadu ((1977) 201 STC 39), a Division Bench of this Court considered the applicability of Section 16 of the TNGST to an assessment of turnover as stipulated in Section 7 to be taxed at compounded rates, concluding as follows:

> As we have pointed out already, in the case of an assessee paying tax under Section 7, he might not have any taxable turnover at all. From this point of view, the concept of taxable turnover and the payment of tax at a particular percentage of the said taxable turnover is foreign to the scope of Section 7. All that Section 7 says is, once an assessee, having regard to the quantum of the total turnover, exercises the option to be assessed under Section 7, Section 3 (1) will not apply. But once the limit of turnover provided for in Section 7 is overstepped, automatically the case will go out of Section 7 with the result Section 3(1) will become immediately applicable and that will be the consequence of the non obstante clause occurring in Section 7. In the four cases before us, as we have pointed out already, the turnover originally assessed plus the suppressed turnover exceeded the maximum limit prescribed in Section 7. Consequently, the moment the turnover was re-determined and the re-determined turnover exceeded the maximum limit of the total turnover fixed in Section 7, the case would go out of Section 7 and would attract Section 3(1). Once Section 3(1) is attracted, there is no dispute that Section 16 will be automatically attracted. Therefore, we have no hesitation whatever in holding that Section 16 is clearly applicable to the facts of the present cases and, accordingly, the reopening and reassessments were done in accordance with law.

15. Thus, once the turnover of the petitioners of an assessee exceeds the maximum limit stipulated under section 7, the liability thereunder becomes subject to the regular scheme of taxation and the dealer automatically goes out of the presumptive tax/compounding scheme.

16. Reference was made to the provisions of Section 16A that dealt with assessment of turnover not declared under Section 7 at compounded rates. It states therein that where any part of the turnover of a dealer who had been permitted to remit

tax on compounded rates had escaped assessment, then the Assessing Officer may, within the time stipulated, determine to the best of his judgment, such escaped turnover and bring the same to tax. The argument was that since Section 16A had been introduced only vide Tamil Nadu Act No.31 of 1972, prior to execution thereof there was no power to reassess assessment on compounded rates. This argument was rejected by the Bench that stated that the enactment of Section 16A was only declaratory of the law as flowing from Section 16 as it originally stood and with a view to clarifying the position that Section 16 contained inherently the power to reassess even an assessment under Section 7, beyond all doubt. This, in effect, is the ratio of the decision in Meenakshi's case.

17. As regards the decision in Sinetech, the matter was carried in appeal and the Division Bench in The Commercial Tax Officer V. M/s.Sinetech (Order dated 04.07.2017 in W.A.No.1536 of 2010) has decided the issue on merits and not on the issue of assumption of jurisdiction. In conclusion, the Bench holds as follows:

> 19. Instant Writ Appeal has been filed solely based on the judgment of the Hon'ble Supreme Court in State of Andhra Pradesh v. Kone Elevators (India) Ltd., reported in (2005) 140 STC 22. Subsequently, in 2014, the Hon'ble Supreme Court has re-visited the decision rendered earlier and accordingly, answered that the manufacture, supply and installation of lift, etc., would fall within the ambit of 'Works Contract'. Decision of the Hon'ble Supreme Court reported in 2014 (7) SCC 1, squarely applies to the pending appeal.

18. Thus, in my considered view, the decisions in the case of Sinetech are of no assistance to the petitioner herein in the light of the categoric pronouncement of the Division Bench in Meenakshi's case (supra) as the eligibility to the presumptive tax scheme depends strictly on the satisfaction of/compliance with the statutory conditions set out therein, one of which is the monetary limit imposed. With the turnover in question exceeding the limit, the ineligibility of such assessee/dealer to the scheme is automatic.

19. As far as the argument relating to the assumption of jurisdiction to re-assessee/review assessments is concerned, I have in my order in M/s.Filaments & Windings (India) Pvt. Ltd.,vs. The Principal Commissioner & Commissioner of Commercial Taxes dated 04.09.2019 (W.P.Nos.13896 and 13897 of 2007) held that the power to re-assess under the provisions of the TNGST Act is wide, the relevant phrase in Section 16(1)(b) being 'for any reason'. The relevant portion of my order is as follows:

6. Having heard the learned counsel, my decision on the assumption of jurisdiction by the Assessing Authority is as under. The issue as to whether the authorities of the State Commercial Taxes Department are empowered to initiate proceedings for re-assessment/revision of assessment and the scope and width of such powers, if any, is no longer res integra and has come to be decided by Division Benches of this Court in several cases. Before referring to the same, I deem it appropriate to refer to the provisions of Section 16 itself, dealing with assessment of escaped turnover that reads as under:

> Section 16.Assessment of escaped turnover.- (1) (a) Where, for any reasons, the whole or any part of the turnover of business of a dealer has escaped assessment to tax the assessing authority may, subject to the provisions of sub-section (2), at any time within a period of five years from the *[date of order of the final assessment by the assessing authority], determine to the best of its judgment the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such assessment.
>
> Section 16(1)(b) Where, for any reason, the whole or any part of the turnover of business of a dealer has been assessed at a rate lower than the rate at which it is assessable, the assessing authority may, at any time within a period of five years from the *[date of order of the final assessment by the assessing authority], reassess the tax due after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such re-assessment.

7. In the present case, it is the provisions of sub-Section 1(b) that would be attracted, insofar as we are concerned with re-assessment of turnover at a higher rate than what was initially applied. Section 16 provides for assessment of escaped turnover 'for any reason'. The language utilised is wide and grants unrestricted powers to an assessing authority to bring

to tax turnover that has in his opinion escaped assessment for any reason whatsoever.

8. In Surya Fertilisers (supra), a Division Bench of this Court, in considering the validity of an assessment invoking powers under Section 16 of the Act, holds that the Assessing Officer can bring to tax turnover that has escaped on account of an erroneous understanding of the nature of transaction, a wrong understanding of the provisions of the Act or erroneous exclusion of taxable turnover from the ambit of tax. The ratio thereof has been confirmed in Yercaud Coffee Curing Works Ltd. (supra) by another Division Bench (Justice Sethuraman being common to both Benches).

9. In the case of Dinod Cashew Corporation (supra), a subsequent Division Bench has reiterated the same view as aforesaid. A specific argument advanced by the petitioner in that case was a comparison of the provisions relating to re-assessment in terms of the Indian Income Tax Act with the Tamil Nadu General Sales Tax Act. The Bench noted that the provisions of the Income Tax Act used the phraseology 'reason to believe' and not 'for any reason', as used in the Sales Tax Act. Thus, the Central enactment imposes a fetter on the powers of the Assessing Authority to re-assess escaped income stating specifically that he had to establish reasonable belief prior to intiating such proceedings. Several judgments have thereafter been rendered by the Supreme Court and High Courts on this anvil of interpretation striking down re-assessments made, in the absence of reasonable belief of escapement of income and absence of tangible/new material upon which such belief could have rested. I refrain from listing the same as they are not strictly germane to the case on hand. When contra distinguishing the language of the statutory provisions of the Income Tax Act with that of the provisions in pari materia under the TNGST Act, I find such restriction or fetter, absent in the latter.

10. The Madras High Court in Dinod Cashew Corporation (supra) has elaborately dealt with the above comparison in the following terms:

> 23. ....The provision of reopening of assessment is a common feature in any tax legislation. In the case of Tamil Nadu General Sales Tax Act, the power under

section 16(1)(a) can be exercised not "for any reason" if the whole or any part of the turnover of business of dealer has escaped assessment to tax. Therefore, the only circumstance on which an assessment can be reopened is that the whole or any par of the turnover of business of dealer has escaped assessment to tax. The power under section 16 is a wide power. The only condition is that the assessing officer must be satisfied that the turnover has escaped assessment. The scope of section 16 has been considered by this Court in Yercaud Coffee Curing Works Ltd. v. The State of Tamil Nadu [1977] 40 STC 531. A Division Bench of this Court in that decision has held that under section 16 of the Tamil Nadu General Sales Tax Act, 1959, it is competent for the assessing authority in a reassessment proceeding to assess an item of turnover which had been omitted to be taxed earlier for any reason and the authority has, therefore, power to reassess a turnover even though in the return that turnover was included and the officer then thought that it was exempt. The Division Bench has referred to the earlier decision of a Full Bench of this Court in State of Madras v. Louis Dreyfus and Company Ltd. [1955] 6 STC 318 (FB) at page 329, where the Full Bench observed as follows :

"The 'escape' that serves as the foundation of the jurisdiction to reopen an assessment is that of 'turnover' and not, be it noted, an assessment. 'Turnover' escapes when it is not noticed by the officer either because it is not before him by reason of an inadvertence, omission or deliberates concealment on the part of the assessee, or because of want of care on the part of the officer the turnover though in the books has not been taken notice of. This would be the natural and normal meaning of the expression 'turnover which has escaped' in rule 17(1)."...

....The argument before the Supreme Court was that section 26 was not applicable to a case where income was returned but was initially held to be not liable to tax. This contention was negatived and the Supreme Court held that the Agricultural Income-tax Officer was competent under section 26 of the Bihar Act to assess an item of income which he had omitted to tax earlier, even though in the return that income was included and the Agricultural Income-tax Officer then thought it was exempt. In paragraph 16 of its judgment the Supreme Court pointed out that the use of the words "any reason" which are of wide import dispenses with those conditions by which section 34 of the Indian Income-tax Act is circumscribed. Having regard to the manner in which section 16 is worded, the restrictions which are based upon the Income-tax Officer for reopening an assessment under section 147 cannot be imported when the validity of the action taken under section 16 is to be judged and having regard to the use of the words "for any reason" it is clear that, even where a turnover was disclosed but it was not subjected to tax, because at the relevant time, the assessing authority thought that particular turnover was exempt under the provisions of section 5(3) of the Central Act, it will be permissible for the assessing authority to reopen the assessment under section 16(1)(a) of the local Act. No infirmity can, therefore, be found in the reassessment proceedings which were either initiated or completed.

24. An argument was advanced before us that in an assessment proceeding under the Income-tax Act, 1961, it is quite possible for an Income-tax Officer, dealing with a case of the dealer, to take the view that any additional tax consequent upon the reassessment under section 16 of the Tamil Nadu General Sales Tax Act would not be treated as deductible expenditure under section 37 of the income-tax Act with the result that as a consequence of the wrong view of the law taken by the assessing authority, the petitioner would be prevented from getting the necessary relief under the Income-tax Act. According to the learned counsel the assessments made under section 16 must be held to be invalid because section 16 cannot be so construed as to take away the benefit of deduction of tax paid for purposes of the Income-tax Act. This

contention must be rejected. The provision under section 16 of the Tamil Nadu General Sales Tax Act will have to be construed in accordance with the well-known rules of interpretation of statutes. What impact this reopening of assessments will have on the petitioners' rights under some other Act like the Income-tax Act will be foreign to the question of construction of validity of the assessment made under section 16 of the Act.

11.Thus, the statutory provision for initiating proceedings for assessment of escaped turnover permits an Assessing Authority under the TNGST Act to initiate proceedings for re-assessment merely if, in his opinion, turnover liable to be brought to tax, has escaped assessment.

20. The above order is equally applicable to the provisions of the TNVAT Act that also employs the phrase ‘for any reason’ in Section 27. Additionally, in the present case I need hardly look beyond the provisions of Section 28, enacted specifically to assess turnover not disclosed under compounding/presumptive provisions that come directly to aid, and also employing the phrase ‘for any reason’.

21. It is relevant to note that in contrast, the U.P. Trade Tax Act,1948 utilises the phrase 'reason to believe' in Section 21 of the Act dealing with 'Assessment of tax on the turnover not assessed during the year'. The provision is extracted below:

'21. Assessment of tax on the turnover not assessed during the year – (1) If the assessing authority has reason to believe that the whole or any part of the turnover of a dealer, from any assessment year or part thereof, has escaped assessment to tax or has been under assessed or has been assessed to tax at a rate lower than that at which it is assessable under htis Act, or any deductions or exemptions have been wrongly allowed in respect thereof, the assessing authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary assess or reasses the dealer or tax according to law'

22. Petitioners’ reliance on the judgment of the Supreme Court in the case of Beema Jewellery Vs. Assistant Commissioner (Assessment Kerala and another) (2004 137 STC 377) is misplaced. The Bench therein was considering a case where additional tax

had been levied under Section 5D of the Kerala General Sales Tax Act, 1963, ('KGST Act'). The assessee therein had opted to pay tax at compounded rates under Section 7 of KGST Act and had challenged the levy of additional tax. The levy was confirmed by the Kerala High Court that stated that where the action for compounding had been exercised by an assessee, the payment of tax is in terms of Section 5(1) of the KGST Act that carries with it the liability to pay additional tax under Section 5D of the Act. This was rejected and the orders of the High Court reversed by the Supreme Court that held that that the two schemes of taxation, both regular as well as presumptive, were entirely different and distinct from each other.

23. When a dealer was assessed under a presumptive scheme, it is akin to a bilateral agreement between the assessee and the Commercial Taxes Department with the specific object of dispensing with the rigours of regular assessment. On the other hand, a regular assessment is as per the separate statutory scheme set out in that regard and it is only in the latter case that the additional burden of Section 5D of the Act would stand attracted. This case does not advance the petitioners' case in the least since on facts, there is no dispute that the annual turnover returned by the petitioner is in excess of the threshold of Rs.50 lakhs thus taking the petitioner out of the scheme of composition.

24. In the light of the discussion as above, there is no infirmity whatsoever in the jurisdiction assumed by the officer in passing the impugned orders.

25. One more thing. The returns of monthly turnover filed by the assessee for the period 2007-08, i.e., 01.04.2007 to 31.03.2008 make it clear that the turnover of the assessee exceeds a sum of Rs.50.00 lakhs. The amendment in question is brought into effect on 18.06.2008 as per which a dealer whose turnover relating to taxable goods has reached Rupees fifty lakhs during the previous year shall not be entitled to exercise the option for presumptive taxation for subsequent years.

26. On 19.07.2010, an order has been passed determining the total turnover at a sum of Rs.48,53,9765/-. Thereafter notices were issued on 19.11.2014 pointing out that for assessment period 2007-08, the monthly returns filed revealed turnover of a sum of Rs.79,19,524/- and in light of the amendment, the petitioner was not entitled to claim compounding of turnover for any year subsequent to 2007-08. The impugned order dated 23.01.2015 records the position that the actual turnover was a sum of Rs.59,19,524/- and that there had been an error in feeding the turnover for the month of January 2008 as Rs.23,79,535/- instead of 3,79,535/-. Thus, as against the

proposal to levy tax on the turnover of Rs.79,19,524/- the taxable turnover was determined as Rs.59,19,524 only, and the request for compounding rejected.

27. Though the petitioner has placed on record an order of assessment determining the total turnover at Rs.48,53,975/- this order inspires no confidence in the Court whatsoever as the computation therein has taken into account the amount stated by the petitioner to have been expended on labour as well as delivery charges. Admittedly, the returns filed by the petitioner reveal turnover of a sum of Rs.59,19,524/-. On receipt of notice dated 09.09.2009, the petitioner has filed a reply stating that inadvertently, deliver and labour charges have been included within the ambit of the turnover returned and once excluded, the amount would stand reduced to Rs.48,69,428/- . This has been accepted by the officer without demur. In my view, the petitioner appears to have made a misguided attempt to reduce the turnover to below Rupees fifty lakhs once put to notice about the amendment to Section 3(4) of the Act and this explanation was accepted without any verification whatsoever by the original authority. In conclusion, the reported turnover as per the returns of income would hold the field in the present case, disentitling the petitioner to the presumptive scheme for the period 2007-08 and all subsequent years.

28. These writ petitions are dismissed as are the connected miscellaneous petitions. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sl

To

1. The Commercial Tax Officer,
   Tambaram I Assessment Circle,
   No.5, II Main Road, New Colony,
   Chromepet, Chennai - 600 044.

2. The Commercial Tax Officer,
   Pammal Assessment Circle,
   No.32 & 33, Sripuram 2nd Street,
   Chrompet, Chennai - 600 044.

+7cc to Mr.V.Sundareswaran, Advocate Sr.96110
+1cc to the Special Government Pleader Sr.96161

W.P.Nos.4056 to 4062 of 2015

ln[co]
srg 14/07/2020