BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.04.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD).18406 of 2015
and
M.P.(MD)No.1 of 2015

Somasundaram Hardwares,
Represented by its Proprietor Mohanraj,
No.85, East Bazaar street,
Thuraiyur,
Trichy District. ... Petitioner

-vs-

The Commercial Tax Officer,
Thuraiyur Assessment Circle,
Thuraiyur,
Trichy District. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records in TIN 33033641649/2011-12 dated 07.09.2015 and to quash the same as illegal, arbitrary and against the basic provisions of the TNVAT Act, 2006 and direct the respondent to reassess the petitioner under Section 3(4) of the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner : Mr.S.Karunakar

For Respondent : Mr.D.Muruganantham
Additional Government Pleader

O R D E R

The instant writ petition has been filed challenging the assessment order dated 07.09.2015 passed by the respondent in TIN No.33033641649/2011-12.

2. It is the case of the petitioner that he is a registered dealer under the TNVAT ACT, 2006. According to him, he opted for assessment on compounding basis as per Section 3(4) of the TNVAT Act, 2006.

3. By a pre revision notice dated 10.07.2015, the respondent proposed to revise assessment of the petitioner for the assessment year 2011-12 on the ground that he has violated the provisions of Section 3(4) of the TNVAT Act, 2006 by effecting interstate purchases and called upon the petitioner to pay a sum of

Rs.16,94,896/- as tax. The said pre revision notice dated 10.07.2015 was also replied by the petitioner. By his reply dated 06.08.2015, denying the allegations contained in the pre revision notice dated 10.07.2015 and submitting the interstate purchases made by the petitioner were exempted goods as they are agricultural implements and therefore, it does not come within the purview of Section 3(4) of TNVAT Act, 2006 as they are non taxable goods.

4. Despite the objections raised by the petitioner, the impugned assessment order dated 07.09.2015 has been passed by the respondent rejecting the contention of the petitioner. By the impugned assessment order, the total turn over of the petitioner was determined by the respondent at Rs.49,19,940/- and the petitioner's tax liability was assessed at Rs.5,22,863/-. Under the impugned assessment order, the respondent rejected the benefit granted to the petitioner for assessment on compounding basis as per Section 3(4) of the TNVAT Act, 2006 on the ground that the petitioner has violated the said provision by effecting interstate purchases as the said benefit is available only for purchases made within the State. Aggrieved by the impugned assessment order dated 07.09.2015, this instant writ petition has been field.

5. Heard Mr.S.Karunakar, learned counsel appearing for the petitioner and Mr.D.Muruganantham, learned Additional Government Pleader appearing for the respondents.

6. The learned counsel for the petitioner drew the attention of this Court to Section 15 of the TNVAT Act and also to Entry No.1 of Part B of Schedule IV of the TNVAT Act. According to him, being a Manvetti/spade as an agricultural implement, the said implement is exempted from payment of tax under TNVAT Act, 2006. Therefore, according to him, it does not fall within the purview of taxable turn over as per Section 3(4) of the TNVAT Act, 2006. According to him, only for taxable goods, there is a bar for effecting purchases from other States but as far as non taxable goods are concerned, the said bar is not applicable.

7. The learned counsel appearing for the petitioner drew the attention of this Court to a single Bench Judgment of this Court in the case of ***VE.R.Veythi Chettiyar Son Vs. The Commercial Tax Officer,*** dated 30.11.2018 passed in ***W.P.(MD)Nos.19595 and 19596 of 2015***, wherein, the learned Single Judge has held that the petitioner therein could be said to have breached the conditions set out in Section 3(4)(a) of the Act only if he purchased taxable commodities from outside the State. When his purchase is admittedly an exempted commodity namely agricultural implements, he cannot be said to have breached the conditions set out in the said statutory provision.

8. In the case on hand also, Manvettis/spades are admittedly agricultural implements. Further, the interstate purchases pertaining to agricultural implements were purchased by the

petitioner in the year 2011, whereas, amendment to Section 3(4) of the TNVAT Act was passed on 01.01.2007 by incorporating taxable turnover instead of total turnover. Since the interstate purchases of agricultural implements were made by the petitioner in the year 2011 and being exempted goods, the value of the same cannot be calculated in the total taxable turnover as per Section 3(4) of the TNVAT Act, 2006.

9. For the foregoing reasons, the contentions of the learned Additional Government Pleader for the respondents is rejected.

10. In the result, the impugned order dated 07.09.2015 passed by the respondent in TIN No.33033641649/2011-12 is hereby quashed and the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

rmi

To
The Commercial Tax Officer,
Thuraiyur Assessment Circle,
Thuraiyur, Trichy District.

+1CC TO MR.S.KARUNAKAR, Advocate Sr. No. 58150
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 58325

W.P.(MD).18406 of 2015
and
M.P.(MD)No.1 of 2015
01.04.2019

TR (11.04.2019) 3P 4C