BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 30.01.2019

CORAM :

THE HONOURABLE **MR.JUSTICE G.R.SWAMINATHAN**

W.P(MD)No.6398 of 2017
and
W.M.P(MD).No.5028 2017

The Match House,
No.11B, Swaminatha Sastry Street,
Tennur, Trichirappalli-620 017,
rep., by its Proprietor,
Mr.D.Baskaran ... Petitioner

Vs.

The Assistant Commissioner (CT),
Woraiyur Assessment Circle,
Trichy. ... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order passed the respondent in her proceedings No.TIN 33753440366/2014-15 dated 14.02.2017 and quash the same.

For Petitioner : Mr.N.Sankar Ganesh

For Respondent : Mr.K.Mu.Muthu
Additional Government Pleader

ORDER

The petitioner has been levied with purchase tax by the impugned order at the hands of the respondent. The petitioner questions the same by contending that Section 12 of the Tamil Nadu Value Added Tax, 2006 will not apply.

2. Heard the learned counsel on either side. Ms.C.Kayalvizhi, Assistant Commissioner (ST) (RAC), Woraiyur Circle, Trichy, entered in appearance and assisted this Court.

3. It is not in dispute that what was purchased by the petitioner was hand made safety matches from certain unregistered dealers in Sivakasi. The only question is whether the petitioner will be liable to pay purchase tax on the ground that he had used the said goods for manufacturing of the final product. Section 12 (1) of the Tamil Nadu Value Added Tax, 2006 reads as under:-

"12(1). Subject to the provisions of Sub-Section (1) of Section 3, every dealer, who in the course of his business purchases from a registered dealer or from any other person, any goods (the sale or purchase of which is liable to tax under this Act), in circumstances in which no tax is payable by that registered dealer on the sale price of such goods under this Act, and either/-

(a) consumes or uses such goods in or for the manufacture of other goods for sale or otherwise ; or

(b) disposes of such goods in any manner other than by way of sale in the State ; or"

(c) despatches or carries them to a place outside the State except as a direct result of sale or purchase in the course of interstate trade or commerce or in the course of export out of the territory of India ; or

(d) installs and uses such goods in the factory for the manufacture of any goods,

shall pay tax on the turnover relating to the purchase aforesaid at the rate specified in the Schedules to this Act."

4. We are concerned with Section 12(1)(A) of Tamil Nadu Value Added Tax, 2006 alone. Two conditions will have to be fulfilled before levy of purchase tax. First condition is that the petitioner should have purchased goods that are liable to tax in circumstances in which no tax was payable by his vendor and that he should have consumed or used the same in or for the manufacture of other goods for sale or otherwise.

5. It is submitted by the petitioner that he had consumed the goods purchased from the unregistered dealers for the manufacture of the final product. His contention is that what was purchased by him was exempted in view of Section 15 of the Tamil Nadu Value Added Tax Act, 2006. The goods in question have been mentioned at Serial No.43 of the 4th Schedule of the Tamil Nadu Value Added Tax Act, 2006. Since the goods purchased by the petitioner are not liable to tax under this Act in the first instance, invoking Section 12 of Tamil Nadu Value Added Tax Act against the petitioner will not arise. In this view of the matter, the order impugned in this writ petition is set aside and the writ petition is allowed. No costs. Consequently, connected Miscellaneous petition is closed.

6. The petitioner had remitted a sum of Rs.72,000/- (Rupees Seventy Two Thousand only) towards compliance of the interim order passed by this Court. Since the order impugned in this writ petition is set aside, the respondent is directed to return the same within a period of six weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

To

The Assistant Commissioner (CT),
Woraiyur Assessment Circle,
Trichy.

+1 CC to M/s.N.SHANKAR GANESH, Advocate in SR-43574
+1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No.43785

W.P(MD)No.6398 of 2017

rmk
PK/23.04.2019 : 3P/4C