IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 01.12.2020
CORAM
THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU
W.P. No. 11673 of 2015
and
M.P. Nos. 1 to 2 of 2015

Tvl. A.B.Selvanathan Chetty Son
Rep. by its Partner
No. 10/1, Meeyan Sahib Street,
Chennai - 600 002. ... Petitioner

-vs-

1.The Assistant Commissioner (CT),
Chepauk Assessment Circle,
Chennai - 600 006.

2.Tvl. Vallis Kandhan Hardware
1/9, Vandalur Kelambakkam Main Road,
Kandigai,
Chennai - 600 048. ... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the First Respondent in his proceedings in TIN:33190661042/2009-10/2014/A3 and quash the proceedings dated 17.03.2015 passed therein.

For Petitioner : Mr. P.V.Sudakar

For Respondents: Mr. A.N.R.Jayaprathap (For R1)
Government Advocate (Taxes)

No Appearance (For R2)

O R D E R
(through video conference)

Heard Mr. P.V.Sudakar, Learned Counsel for the Petitioner and Mr. A.N.R.Jayaprathap, Learned Government Advocate (Taxes) appearing for the First Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the Order No. TIN:33190661042/2009-10/2014/A3 dated 17.03.2015 passed by the First Respondent attaching the amounts due by the Second Respondent to the Petitioner for recovery of tax arrears, which

has been demanded for the years 2006-2007, 2007-2008 and 2008-2009 in furtherance to the re-assessment Order Nos. TIN/33190661045/ 2006-07, TIN/33190661045/2007-08 and TIN/33190661045/2008-09 dated 31.10.2013 passed by the First Respondent.

3. It is submitted by the Learned Counsel for the Petitioner that the aforesaid re-assessment orders dated 31.10.2013 for the years 2006-2007 to 2008-2009 passed by the First Respondent relying on Section 19(20) of the TNVAT Act, which was inserted by Tamil Nadu Act XXII of 2010 with effect from 19.08.2010 and subsequently applied retrospective effect from 01.01.2007 by Tamil Nadu Act XLII of 2010, was assailed by the Petitioner in the Writ Petitions in W.P. Nos. 7831 to 7833 of 2014 in this Court, which were dismissed by order dated 10.10.2014 passed by this Court. However, on appeal in Civil Appeal Nos. 8139 to 8141 of 2016 preferred by the Petitioner before the Hon'ble Supreme Court of India, the matter was heard along with other cases filed by similarly placed persons and by order dated 05.08.2016, it was held as follows:-

> "18. When we keep in mind the aforesaid parameters laid down by this Court in testing validity of retrospective operation of fiscal laws, we find that the amendment in-question fails to meet these tests. The High Court has primarily gone by the fact that there was no unforseen or unforeseeable financial burden imposed for the past period. That is not correct. Moreover, as can be seen, sub-section (20) of Section 19 is altogether new provision introduced for determining the input tax in specified situation, i.e., where goods are sold at a lesser price than the purchase price of goods. The manner of calculation of the ITC was entirely different before this amendment. In the example, which has been given by us in the earlier part of the judgment, 'dealer' was entitled to ITC of Rs. 10/- on re-sale, which was paid by the dealer as VAT while purchasing the goods from the vendors. However, in view of Section 19(20) inserted by way of amendment, he would now be entitled to ITC of Rs. 9.50. This is clearly a provision which is made for the first time to the detriment of the dealers. Such a provision, therefore, cannot have retrospective effect, more so, when vested right had accrued in favour of these dealers in respect of purchases and sales made between January 01, 2007 to August 19, 2010. Thus, while upholding the vires of sub-section (20) of Section 19, we set aside and strike down

Amendment Act 22 of 2010 whereby this amendment was given retrospective effect from January 01, 2007.

19. Appeals are partially allowed to the aforesaid extent. No orders as to costs.”

On the said premise, it is contended that inasmuch as re-assessment made relying on the retrospective effect of Section 19(20) of the TNVAT Act for the period from 2006-2007 to 2008-2009 now stand set aside, the impugned order of recovery issued for the amounts demanded cannot survive any further and would have to be nullified.

4. There is substantial force in the aforesaid submissions made by the Learned Counsel for the Petitioner, which deserves acceptance and it is held that the impugned order of recovery of the amounts due for the re-assessment made for the years 2006-2007 to 2008-2009 under the TNVAT Act, is set aside. Though obvious, it is made clear that the Respondents are not precluded from giving effect to Section 19(20) of the TNVAT Act in respect of transactions from 19.08.2010 onwards in terms of the aforesaid decision of the Hon'ble Supreme Court of India.

In the result, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

dm

To
The Assistant Commissioner (CT),
Chepauk Assessment Circle,
Chennai – 600 006.

+1 cc to Mr.B.Raveendran Advocate sr38951
+1 cc to Special Government Pleader taxes sr38750

W.P. No. 11673 of 2015

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