IN THE HIGH COURT OF JUDICATURE OF MADRAS

RESERVED ON : 03.09.2020

PRONOUNCED ON : 10.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.18634 of 2012
and MP.No.1 of 2012

M/s.Mass Corporation
rep. by its Proprietor
M.Basheer Ali,
No.722, Nehruji Road,
Villupuram. ...Petitioner

.Vs.

The Assistant Commissioner (CT),
Villupuram-II Assessment Circle,
Villupuram. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the impugned proceedings of the respondent herein in TIN No.33184700952/10-11 dated 28.06.2012 and to quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan
For Respondent : Mr.R.Swarnavel, GA (T)

ORDER

With the consent of both the parties, the present Writ Petition is heard through Video Conferencing on 03.09.2020.

2. The petitioner herein was originally assessed, on self assessment basis under Section 22(2) of the Tamil Nadu Value Added Tax Act 2006 (hereinafter referred to as 'TNVAT Act'), for the Assessment Year 2011-2012 for a turnover below Rs.50 lakhs. On inspection, it is alleged that there was sales suppression and by taking into account the alleged suppressed sale, the total turnover was arrived at a sum, which is over and above Rs.50 lakhs. In view of this, the first respondent had issued the impugned notice stating that the petitioner was ineligible to pay tax at the compounding rate under Section 3(4) of the

TNVAT Act and that it was proposed to levy tax on the total turnover, including the sale suppression turnover at the rate of 12.5%.

3. While the petitioner contends that under Section 3(4) of the TNVAT Act, the respondent is entitled to levy tax at the rate of 12.5% on the amount that exceeds Rs.50 lakhs, the respondent claim that the dealer is not entitled for the compounding system under Section 3(4) of the TNVAT Act, since the turnover had exceeded Rs.50 lakhs and therefore, he would come out of the purview of the benefit under Section 3(4) of the TNVAT Act and is liable to pay the regular tax for the entire turnover under Section 3(2) of the Act.

4. Section 3(4)(b) of the Tamil Nadu Value Added Tax, (Fourth Amendment) Act 2011, enables the dealer to pay tax for a year on his turnover relating to taxable goods upto Rs.50 lakhs at 1% and for the sales turnover over and above Rs.50 lakhs, he is liable to pay tax under Section 3(2). The aforesaid amendment came into effect from 01.04.2012 and a bare reading of the provision explicitly permits the dealer to pay tax at the compounded rate of 1% under Section 3(4) for the sales turnover below Rs.50 lakhs and for the turnover that exceeds Rs.50 lakhs, they are liable to pay tax under Section 3(2) of the TNVAT Act. In view of the amendment, the respondent may not be justified in bringing the dealer out of the purview of Section 3(4) of the Act, as and when it is found that the sales turnover of the dealer exceeds Rs.50 lakhs and thereby, subject them to the rate of tax under Section 3(2) for the "entire sales turnover".

5. The aforesaid proposition has also been reiterated by this Court in M/s.Rajendran Timber and Plywood, Selaiyur, Chennai-600 073 Vs. The Assistant Commissioner (CT), Selaiyur Assessment Circle, Chennai-600 073 in a decision dated 29.06.2016 taken in W.P.No.15889 of 2015. As such, the impugned proceedings which proceeds to levy tax on the entire sales turnover is not in conformity to Section 3(4) of the Act and is liable to be set aside.

6. For all the foregoing reasons, the impugned proceedings in TIN No.33184700952/10-11 dated 28.06.2012, are set aside and the matter is remanded back to the respondent herein for reconsideration. The Assessing Authority shall take into consideration of the findings in this order and thereafter, reassess the petitioner's sales turnover, after giving due opportunity of personal hearing to the petitioner and on consideration of any objections raised by the petitioner during the assessment proceedings, the Assessing Authority shall endeavor to complete the assessment proceedings, as expeditiously as possible.

7. The Writ Petition stands allowed accordingly. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Villupuram-II Assessment Circle,
Villupuram.

+1cc to the Spl. Government Pleader, Sr.No.29674

ORDER MADE IN
W.P.No.18634 of 2012
and M.P.No.1 of 2012

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rr ii (09/10/2020)