IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :04.08.2020

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.29418 of 2015
and
M.P.No.1 of 2015

M/s.The New Auto Electric Service,
Rep.by its Proprietrix- P.Kalliammal,
No.351, Trichy Road,
Namakkal,
Namakkal District. ...Petitioner

Vs

1.The State of Tamil Nadu,
Rep.by the Secretary,
Commercial Taxes and Registration Department,
Fort St.George, Chennai -9.

2.The Commercial Tax Officer,
Namakkal Town,
Namakkal,
Namakkal District. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of declaration, declaring that the Tamil Nadu Value Added Tax (Fourth Amendment) Act, 2011 [Act No.27 of 2011] as being clarificatory and / or declaratory in nature with retrospective operation.

For Petitioner : Mr.S.Rajasekar

For Respondents: Mr.A.N.R.Jaya Prathap
Special Government Pleader

O R D E R

Today, the matter is called through video conferencing. By consent of both the parties, the writ petition is taken up for final disposal.

2. The prayer in the present Writ Petition is for an issuance of the writ of declaration to declare that the amendment in Section 3(4) of the Tamil Nadu Value Added Tax

(Fourth Amendment) Act, 2011 is retrospective in operation.

3. The learned counsel for the petitioner would rely upon the order dated 03.10.2020 passed in W.P.Nos.9996 of 2012, 17314 of 2015, 3666 of 2012 and 21237 of 2011 in the case of Tvl. Makkal Stores, rep. by its partner A.J. Issath & 3 others vs. State of Tamil Nadu, rep., by The Secretary, Commercial Taxes and Registration Department, Fort St. George, Chennai-9 and others, in which the learned Judge of this Court has relied upon another decision in W.P(MD).No.3744 of 2015 in the case of Tvl.Shanmugamari Timbers vs. The Commercial Tax Officer, Chokkikulam Assessment Circle, Madurai-20, had held that the amendment to Section 3(4) of the TNVAT Act would have to be applied retrospectively. The relevant portion of the order reads as follows:

> "35. In the second set of Writ petitions, the petitioners urge that the Amendment to Section 3(4) inserted vide Amendment Act 2011 be treated as retrospective. The Amendments in 2008 and 2011 have been extracted earlier and reference may be made to paragraph 6 in this regard.
>
> 36. A reading of both makes it abundantly clear that there were doubts on the actual interpretation and application of the 2008 amendment which is why clarity was brought in by way of the 2001 amendment to provide that liability to tax would attach itself to a dealer only in respect of such turnover in excess of Rs.50 lakhs. The application of the amended provision in 2011 would apply for all assessments from 2006 onwards since it was brought in clearly to correct the lacune contained in the 2006 amendment, being unclear.
>
> 37.The Statement of Objections and Reasons in respect of the 2011 amendment makes this position furthermore clear, stating as follows:
>
> STATEMENT OF OBJECTS & REASONS
>
> As per clause (b) of sub-Section (4) of Section 3 of the Tamil Nadu Value added Tax Act, 2006 (Tamil Nadu Act 32 of 2006) if the turnover relating to taxable goods of a dealer who has exercised his option to pay tax under clause (a) of the said sub-section (4) in a year, reaches rupees fifty lakhs at any time during that year such dealer is liable to pay tax under sub-section (20) of said section 3 on all his sales of rupees fifty lakhs and above. Due to this provision, while the dealer does not collect tax on turnover relating to taxable goods below

rupees fifty lakhs, he is required to pay the tax.

2. While moving the demand for grant in respect of the Commercial Taxes Department for the year 2011-12, the Hon'ble Minister for Commercial Taxes and Registration has announced that amendment to sub-section (4) of section 3 of the said act will be made to rectify the above situation,so that if the turnover relating to taxable goods of a dealer paying tax under clause (a), in a year, reaches rupees fifty lakhs at any time during that year, such dealer is liable to pay tax under sub-section (2) of that section on all his sales of taxable goods above rupees fifty lakhs.

3. The Government have decided to amend the Tamil Nadu Value Added Tax, 2006 (Tamil Nadu Act 32 of 2006) suitable fro the purpose.

4. The Bill seeks to give effect to the above decision.

(highlighting supplied for emphasis)

38. The Sue of the word 'rectify' and the analysis of the reasons for insertion of this amendment in the first paragraph wherein it is captured that a higher rate of tax would be payable by a dealer even in respect of turnover where he has not collected taxes leaves me in no doubt that the amendment was inserted only to correct an unintended anomaly that arose in the operation of the law, by virtue of the amendment inserted in 2006.

39.A learned Single Judge of this Court sitting in the Madurai Bench has considered the amendment to Section 3(4) of the Act concluding that the Act would have to be retrospectively applied in Tvl.Shanmugamari Timbers V. The Commercial Tax Officer (order dated 20.12.2018 in W.P.(MD) NO.3744 of 2015).

40. The petitioner in that case, a dealer in timber, had challenged an assessment for the period 2010-2011. The turnover of the petitioner had crossed the limit of RS.50.00 lakhs in March, 2011 and the sales turnover for the entire year was a sum of Rs.63,50,354/-. The Department thus took the view that since the turnover for the year was in excess of RS.50.00 lakhs, the petitioner would not be entitled to claim the benefit of the presumptive tax scheme and would have to be regularly assessed, whereas, the petitioner took the view that as

per the amendment in 2011, only the excess over and above Rs.50.00 lakhs could be regularly assessed. The learned Judge took note of the judgments of the Supreme Court in Vatika Township Private Limited (supra), Keshavlal Jethalal Shah V. Mohanlal Bhagwandas & Another (1968 AIR 1336) and Sebi V.Alliance Finstoc Ltd. (2015) 16 SCC 731) as well as the doctrine of fairness in coming to the conclusion that Act 27 of 2011 would have retrospective application. In conclusion, he set aside the impugned order and remanded the matter to the file of the respondent to pass orders a fresh after hearing the petitioner.

41.This decision has not be challenged by the revenue and hence, even applying the principle of consistency, the argument of the petitioner is liable to be accepted."

4. The aforesaid findings are self explanatory. As such, the revised assessment order giving a prospective effect to Section 3(4)(b) from 01.04.2012, is opposed to the aforesaid order of this Court. Accordingly, the proceedings itself requires to be reconsidered by the respondent.

5. Since this Court in Tvl. Makkal Stores & others (supra) has already held that the amendment to Section 3(4) of the Tamil Nadu Value Added Tax Act, 2011 will have retrospective operation, no further declaration is required in the present case.

6. Accordingly, the Writ Petition stands closed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

hvk

To

1.The State of Tamil Nadu,
Rep.by the Secretary,
Commercial Taxes and Registration Department,
Fort St.George, Chennai-9.

2.The Commercial Tax Officer,
Namakkal Town,
Namakkal,
Namakkal District.

+1 cc to The Special Government Pleader(Tax), Sr.No. 26146

W.P.No.29418 of 2015
and
M.P.No.1 of 2015

SSV(CO)
RMP(15/09/2020)