BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **18.12.2020**
CORAM:
THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P.(MD)No.15342 of 2020
and
W.M.P.(MD).Nos.12892 & 12893 of 2020
(Through the Video Conferencing)

Tvl.Arcot Electricals,
Represented by its Managing Partner S.N.Khaja Mohideen,
No.37, Palaniyappan Street,
Pattukottai-614 601,
Thanjavur District. ... Petitioner

Vs

The State Tax Officer,
Pattukottai-I Assessment Circle,
Commercial Taxes Building,
Pattukkottai, Thanjavur District. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent in its impugned proceedings made in TIN:33464162060/2007-08, dated 06.03.2020 and quash the same as illegal and arbitrary and consequently direct the respondent to re-do the assessment for the financial year 2007-08 as per ratio held in the judgment of this Court in the case of Tvl.Shanmugamari Timbers Vs. The Commercial Tax Officer, Chokkikulam Assessment Circle, in W.P.(MD).No.3744 of 2015, after affording an opportunity of personal hearing.

For Petitioner : Mr.J.Prasannakumar

For Respondent : Mrs.J.Padmavathi Devi
Special Government Pleader

ORDER

The impugned assessment order dated 06.03.2020 has been passed by the respondent against the petitioner giving an interpretation that on crossing the ceiling limit of Rs.50,00,000/- (Rupees Fifty Lakhs), the dealer, who has availed the composition scheme under Section 3(4) of TNVAT Act, 2006, will have to pay tax under Section 3(2) of the Act on his entire sales turnover. The petitioner has challenged the said interpretation given by the respondent and would submit that the respondent failed to apply the amended provision of Section 3(4)(b) of the TNVAT Act, 2006, notified by G.O.Ms.No.135, dated 31.10.2011, as well as the ratio held in the case of ***Tvl.Shanmugamari Timbers Vs. The Commercial Tax***

Officer, Chokkikulam Assessment Circle, in W.P.(MD).No.3744 of 2015.

2. Heard Mr.J.Prasannakumar, learned counsel for the petitioner and Mrs.J.Padmavathi Devi, learned Special Government Pleader for the respondent.

3. The issue raised by the petitioner has been considered by a learned Single Judge of this Court in W.P.(MD).No.3744 of 2015. By his order, dated 20.12.2018, in Paragraph No.13, while interpreting the amended Section 3(4)(b) of the TNVAT Act, 2006, he has observed as follows:-

> *"13.The intent and object of the legislature is clearly evident by the use of the expression "Substituted". Therefore, it will have to be necessarily construed as retrospective. In fact, that is the object which the legislature intend to subserve. Therefore, I hold that the Tamil Nadu Act 27 of 2011 being a substitutive amendment will cover the case of the writ petitioner also."*

4. The amended Section 3 (4) (b) of the Tamil Nadu Value Added Tax Act, 2006, reads as follows:-

> *"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, he shall inform the assessing authority in writing within seven days from the date on which such turnover has so reached. (Such dealer is liable to pay tax under Sub-Section (2) on all his sales of Rupees Fifty Lakhs and above) and he is entitled to the input tax credit on the purchases made from the date and on the stock available with him, the purchases of which has been made within ninety days before the date, on which such turnover has reached Rupees Fifty Lakhs.*
>
> *Provided that such dealer whose turnover has reached Rupees Fifty Lakhs during the previous years shall not be entitled to exercise such option for subsequent years."*

5.Prior to the amendment of Section 3(4)(b) of the Act notified on 31.10.2011, the interpretation given by the Assessing Officer in the impugned assessment order was applicable. However, after the amendment, the dealer will have to pay tax relating to taxable goods upto Rs.50,00,000/- on such rate not exceeding 1% as may be notified by the Government and is liable to pay tax under Sub-Section (2) on all his sales of taxable goods above Rs.50,00,000/-, shall be substituted. The issue that arose for consideration in W.P.(MD).No.3744 of 2015 was whether the amendment made to Section 3 (4) (b) of the Tamil Nadu Value Added Tax Act, 2006, is prospective or retrospective.

6. The learned Single Judge in his order dated 20.10.2018 passed in W.P.(MD).No.3744 of 2015, as indicated earlier, has held that the amendment to be retrospective. The present impugned order pertains to the assessment year 2007-2008.

7. The learned Special Government Pleader for the respondent, on instructions, would submit that the respondent has accepted the verdict given in the order dated 20.12.2018 passed in W.P.(MD).No.3744 of 2015 and has now been assessing the returns of dealers under Section 3 (4) (b) of the Tamil Nadu Value Added Tax Act, 2006 only retrospectively. The issue involved in the case on hand is identical to the issue that was involved in W.P.(MD).No.3744 of 2015. Therefore, the impugned assessment order was not passed in accordance with the judgment dated 20.12.2018 passed in W.P.(MD). No.3744 of 2015. Hence, the same will have to be quashed and remanded back to the respondent for fresh consideration.

8. Accordingly, the impugned assessment order dated 06.03.2020 passed by the respondent is hereby quashed and the matter is remanded back to the respondent for fresh consideration and the respondent shall pass final orders on merits and in accordance with law after affording sufficient opportunity to the petitioner including granting them the right of personal hearing in the light of decision rendered by this Court in ***W.P.(MD).No.3744 of 2015*** dated 20.12.2018 in the case of ***Tvl.Shamugamari Timbers Represented by its Proprietor M.Selvendran Vs. The Commercial Tax Officer, Chokkikulam Assessment Circle, Madurai-20*** within a period of twelve weeks from the date of receipt of a copy of this order.

9. With the aforesaid direction, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

10. Since the impugned assessment order has been quashed, the Bank attachment made in Account No.CA 03719000049783 maintained by the petitioner at Pattukkottai Branch of the City Union Bank, shall stand released from attachment.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

tsg

To

The State Tax Officer,
Pattukottai-I Assessment Circle,
Commercial Taxes Building,
Pattukkottai, Thanjavur District.

+1 CC to M/s J.Prasannakumar,Advocate,in SR.No.26566 of 2020.

Order made in
W.P.(MD)No.15342 of 2020
Dated:18.12.2020

(TP)CO
AP(06/01/2021) 4P 3C