IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.7080 of 2020 and
WMP.No.8434 of 2020

M/s.Agathiyan Traders,
Represented by its Proprietrix S.Vidhya
No.2 Varadharajan Pillai Nagar
Nellikuppam Main Road Semmandalam
Cuddalore -607 001. ...Petitioner

Vs.

1 The Appellate Deputy Commissioner (CT)
Cuddalore Commercial Taxes Building
Sub-Jail Road Cuddalore.

2 The Assistant Commissioner (CT) (FAC)
Cuddalore Town Assessment Circle
Cuddalore.

3 The Branch Manager
Karur Vysya Bank
Car Street Cuddalore - 607 002.
...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorari, calling for the records of the first respondent in his proceedings in A.P.No. 230/2018 VAT quash the order dated 23.10.2019 made therein and further direct the first respondent to consider and pass orders in the Rectification Application dated 9.3.2020 in the light of the judgment of this Honble Court dated 20.12.2018 made in W.P.No.(MD) No. 3744 of 2015.

For Petitioner : Mr.P.Rajkumar
For Respondents: Mr.TNC.Kaushik,
Government Advocate – R1 & R2
No appearance - R3

O R D E R

The challenge in this Writ Petition is to an order passed by the first appellate authority confirming the order of assessment passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') for the period 2007-08.

2. The only issue that arises is as to whether the petitioner is entitled to concessional rate of tax at 0.5% for the turnover earned. I have, in a batch of matters, W.P.Nos.9996 of 2012 and batch, dated 03.10.2019, held that the amendment to Section 3(4), inserted vide Amendment Act 2011, should be taken to be retrospective. At paragraph Nos.36 to 38, I have held as follows:

> ' ....
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> 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 2011 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.
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> 37. The Statement of Objects 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 subsection (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 rupes 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 subsection (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 Act, 2006 (Tamil Nadu Act 32 of 2006) suitable for the purpose.

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

(highlighting supplied for emphasis)

38. The use 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.

....

3. This decision has not been challenged till date and though the learned Government Advocate would state that a Writ Appeal has been filed, it is still in SR stage. Hence, I reiterate the view taken by me in the above matter, quash the impugned order and allow this Writ Petition.

4. With the quashing of the impugned assessment order, coercive recovery proceedings, by way of attachment of bank account of the petitioner, would also go. There is hence, a direction to R3 to lift the attachment of the bank account of the petitioner in Karur Vysya Bank, Cuddalore, forthwith. No costs. Connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To
1 The Appellate Deputy Commissioner (CT)
Cuddalore Commercial Taxes Building
Sub-Jail Road Cuddalore.

2 The Assistant Commissioner (CT) (FAC)
Cuddalore Town Assessment Circle
Cuddalore.

3 The Branch Manager
Karur Vysya Bank
Car Street Cuddalore - 607 002.

+1 CC to Mr.P. Raj Kumar, Advocate sr 38722.
+1 CC to The Special Government Pleader(T) sr 38954.

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KSM(CO)
SP(02/09/2021)