IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2021

CORAM:

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

W.P. No. 21036 of 2014 and
MP No.1 of 2014

M/s.Lakshmi Auto Stores
rep. By its Partner N.J.Chandrakumar
59/2 Sathiyamoorthy Road
Arni,
Thiruvannamalai District. ... Petitioner

Vs.

1. The State of Tamilnadu
   rep. By the Secretary to Government
   Commercial Taxes & Registration Department
   Fort St. George,
   Chennai.

2. The Commercial Tax Officer,
   Arni Assessment Circle,
   Thiruvannamalai District. ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari to call for the records of the second respondent in his proceedings in TIN 33624562000/2011-2012 dated 08.07.2014 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan

For Respondents : Mr.V.Nanmaran
Government Advocate for R1 & R2

O R D E R

The writ petition is filed to call for the records in respect of the proceedings dated 08.07.2014 on the file of the second respondent and quash the same.

2.The petitioner is a dealer in Auto Spare Parts. The petitioner effects purchase only from registered dealers situated inside the State and effects only second or subsequent sales within the State of Tamilnadu. The petitioner is a registered dealer under the Tamil Nadu Value Added Tax and is an assessee on the file of the second respondent.

3. Learned counsel appearing on behalf of the writ petitioner made a submission that the issues raised with reference to the provisions of the Act are elaborately considered by this Court and thus, no more res integra. The judgment dated 03.10.2019 is not taken by way of appeal by the State and therefore, the said judgment is to be followed for the purpose of disposing of the present writ petition.

4. The findings of the judgment dated 03.10.2019 in W.P.No.9996/2012 are extracted hereunder:

> "40.The petitioner in that case, a dealer in timber had challenged an assessment for the period 2010-11. 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 Limited (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 afresh 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.
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> 42.In the light of the above discussion, W.P.Nos.9996 of 2012 and 17314 of 2015 are allowed. Connected Miscellaneous Petitions are closed with no order as to costs."

5. In view of the judgment cited supra, the impugned order in the present writ petition passed by the second respondent in proceedings in TIN 33624562000/2011-2012 dated 08.07.2014 is

quashed and the matter is remitted back to the respondents for the purpose of fresh adjudication and by following the principles laid down in the judgment cited supra.

6. The writ petition stands allowed accordingly. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

RR

To

1. The Secretary to Government
   Commercial Taxes & Registration Department
   Fort St. George,
   Chennai.

2. The Commercial Tax Officer,
   Arni Assessment Circle,
   Thiruvannamalai District.

+1cc to Mr.S.Ramanathan, Advocate, S.R.No.38311
+1cc to the Special Government Pleader, S.R.No.38960

W.P.No. 21036 of 2014

AJS(CO)
HS(31/08/2021)