IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A. NO.2844 OF 2021 AGAINST WP.18110/2016
AND
C.M.P. NO.18925 OF 2021

M/s.Suseela Machinery Electricals ... Appellant/ Petitioner

Vs.

The Commercial Tax Officer,
Cuddalore Town Assessment Circle,
Cuddalore. ... Respondent/ Respondent

PRAYER: Writ Appeal filed under clause 15 of the Letters Patent, praying to set aside the order of this court dated 11.08.2021 in W.P.No.18110 of 2016.

Prayer in W.P.No.18110 of 2016:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the respondent in TIN No.33524380568/2011-2012 dated 30.03.2016 and quash the same as illegal arbitrary and against the principals laid down by this Honourable Court reported in 14 STC 694 in the case of Kather Nadar Vs. State of Madras

For Appellant : M/s.Adithya Reddy

For Respondent : Mr.Prashanth Kiran
Government Advocate (Taxes)

JUDGMENT

(Judgment of the court was delivered by Mohammed Shaffiq, J.)

The short question that arises for consideration in this writ appeal is as to whether the denial of the benefit of Composition Scheme under Section 3(4) of the Tamil Nadu Value

Added Tax Act, 2006 (hereinafter referred to as "TNVAT Act, 2006") on the premise that the appellant, after having opted for the Composition Scheme, had collected taxes by mistake in respect of thirteen (13) invoices out of more than five-thousand (5,000) invoices raised during the year 2011-12, but the same had been refunded to the customers on issuance of notice, is sustainable.

2. Briefly stated facts are as follows:-

The appellant is a dealer in electrical items and purchased the same from local registered dealers and an assessee on the files of the respondent herein. While so, they had opted to pay tax under the Composition Scheme in terms of Section 3(4) of TN VAT Act, 2006 by filing Form-K returns and had complied with all the conditions set out therein. On verification of records, it was found that the appellant had collected taxes in respect of thirteen (13) invoices and thereby violating the provisions of section 3(4) and therefore, they are not eligible to pay tax at the rate of 0.5% and are liable to pay tax at the higher rate of 14.5% for the entire sales turnover for the year 2011-12. Accordingly, the respondent issued a show cause notice dated 27.07.2015, calling upon the appellant to submit its objections. The appellant soon after realising the mistake, had refunded the tax amount collected from the customers by issuing cheques to them and filed its objection explaining that the collection of taxes in respect of 13 invoices out of 5000 invoices, was made inadvertently and also enclosed the proof for refund/returning the tax amount to the respective customers. Without considering the reply so filed by the appellant, the respondent passed the assessment order dated 30.03.2016 determining tax under section 3(2), instead of under section 3(4) of the TNVAT Act, 2006. Challenging the said order, the appellant preferred WP.No.18110 of 2016, which by order dated 11.08.2021, was disposed of by the learned Judge, by relegating the appellant to approach the appellate authority, within a period of four weeks and by directing the appellate authority to dispose of the said appeal, after providing opportunity to them. Feeling aggrieved, the appellant / assessee is before this court with this writ appeal.

3.Heard both sides and perused the materials placed before this court.

4.At the outset, it would be appropriate to refer to the provisions of Section 3(4) of the TNVAT, 2006, as per which, the appellant filed its return and pay tax, which reads as under:-

> "Section 3(4)(a) Notwithstanding anything contained in sub-section (2), but subject to the provisions of subsection (1), every dealer, who

effects second and subsequent sales of goods purchased [from the registered dealers] within the State, whose total turnover relating to taxable goods, for a year, is less than rupees fifty lakhs, may, at his option, instead of paying tax under sub-section (2), pay a tax, for each year, on his turnover relating to taxable goods at such rate not exceeding one percent, as may be notified by the Government. Such option shall be exercised by the dealer , - (i)Who commences business, within thirty days from the date of commencement of the business; (ii)Whose turnover is below rupees fifty lakhs during the previous year, on or before 30th day of April of the year for which he exercises such options; (iii)For the year 2008-09, within thirty days from the date of commencement of the Tamil Nadu Value Added Tax (Second Amendment) Ordinance, 2008:

Provided that such dealer shall not collect any amount by way of tax or purporting to be by way of tax;

Provided further that such dealer shall not be entitled to input tax credit on the goods purchased by him;

Provided also that the dealer who purchased goods from such dealer shall not be entitled to input tax credit on the goods purchased by him.

Section 3(4)(b) – 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 may pay a tax for each year on the turnover relating to taxable goods upto rupees fifty lakhs at such rate not exceeding one per cent 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 rupees fifty lakhs] 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 year shall not be entitled to exercise such option for subsequent years. "

A reading of Section 3(4) as extracted above, would show that an option is provided to the dealers with a turnover of less than Rs.50 lakhs for a year, who may, instead of paying taxes under sub-section (2) to Section 3 of the said Act, pay taxes at 0.5 percent i.e., the rate notified by the Government under Section 3(4) of the Act inter alia subject to the following conditions:-

a. Dealer shall not collect any amount by way of tax or purporting to be by way of tax.

b. Dealer shall not be entitled to Input Tax Credit on the goods purchased by him.

c. Dealer who purchased goods from such dealer shall not be entitled to Input Tax Credit on the goods purchased by him.

5.Admittedly, the turnover of the appellant is below Rs.50 lakhs for the assessment year in question and there was no inter-state purchase effected. However, the appellant had inadvertently collected taxes in respect of thirteen (13) invoices out of five-thousand (5,000) invoices raised during that year, but refunded to its customers immediately, upon receipt of notice from the respondent. According to the learned counsel for the appellant, the refund of the amount of tax collected by the appellant ought to have been considered as if they had not made the initial collection of sales tax and therefore, they have not violated any of the conditions set out in section 3(4) of the TNVAT Act. In support of the said contention, the learned counsel placed reliance on the decisions of this court in Kathan Nadar Company v. State of Madras, reported in (1963) 14 STC 694 and Indian Steel Rolling Mills v. Commercial Tax Officer, reported in (1965) 16 STC 285.

6.Per contra, the learned Government Advocate (Taxes) appearing for the respondent submitted that as per Section 3(4) of the TNVAT Act, the appellant having opted to pay the taxes under the composition scheme is prohibited from collecting any amount by way of taxes or purporting by way of taxes, whereas they had collected taxes in respect of 13 invoices in violation of the said provision, which deemed to have retracted the appellant from the benefit of the composition scheme.

7. However, we find some bonafide in the submission so made by the learned counsel for the appellant. There cannot be any dispute that the amount of tax collected inadvertently in

respect of 13 invoices out of 5000 invoices raised during the year 2011-12, was refunded to the respective customers on realisation of the mistake by the appellant. In such circumstances, the benefit of the composition scheme, especially when the appellant had complied with all other conditions, cannot be denied to them. The said factum of refund of collected tax by the appellant, that too, before completion of the assessment proceedings, was not taken into consideration by the assessing officer as well as by the learned single judge of this court, in a proper perspective. Therefore, we are inclined to set aside the orders passed by the assessing officer and the learned single Judge of this court.

8.Accordingly, the order dated 11.08.2021 passed in WP.No.18110 of 2016 and the order of assessment passed by the respondent vide proceedings No.TIN:33524380568/11-12 dated 30.03.2016 for the Assessment Year 2011-12 are set aside. The matter is remitted back to the respondent / assessing officer to verify the documents produced by the appellant after providing an opportunity of hearing and pass appropriate orders, on merits. Such an exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this judgment.

9.This writ appeal stands disposed of in the above terms. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer,
Cuddalore Town Assessment Circle, Cuddalore.

+1cc to M/s.Adithya Reddy, Advocate, S.R.No.61159

W.A. No.2844 of 2021
and
C.M.P. No.18925 of 2021

JP II(CO)
PM/10/02/2022