



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.02.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.19268 of 2015

and

M.P. (MD)No.1 of 2015

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Tvl.S.S.Marketing,
Represented by its Proprietrix,
Dhowlath Niza.

... Petitioner

Vs.

1.The State of Tamilnadu,
Represented by its Secretary,
Department of Commercial Taxes and Registration,
Secretariat, St.George Fort,
Chennai - 600 009.

2.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of
Commercial Taxes, Ezhilagam, Chepauk,
Chennai - 600 005.

3.The Deputy Commercial Tax Officer,
Thirunelveli Bazaar Assessment Circle,
Commercial Taxes Building,
Reserve Line Road, Palayamkottai,
Thirunelveli District - 627 002.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of the 3rd respondent in TIN No.33955641768/2011-12 dated 30.04.2015 and quash the same and consequently direct the 3rd respondent to re-do the assessment after giving adequate opportunity to the petitioner.

For Petitioner : Mr.B.Rooban
For Mr.R.Veeramanikandan.

For Respondents : Mrs.J.Padmaavathi Devi,
Special Government Pleader.

ORDER

Heard the learned counsel on either side.

2.The writ petitioner is a dealer registered with the third respondent. The case on hand pertains to the assessment year 2011-12. Hoping that her turn over would cross Rs.5 Crores and that she



would be liable to pay tax, in anticipation, the petitioner was collecting tax from her purchasers. However, the eventual turn over was below the taxable limit. The respondent invoking Section 41 of the Tamil Nadu Value Added Tax, passed an order dated 19.12.2014 forfeiting the tax amount of Rs.2,78,151/- collected by the petitioner. Reversal of input tax credit to the tune of Rs.2,78,151/- was also made. Aggrieved by the same, the petitioner submitted her explanation to the third respondent. The said objection was not considered and the impugned order dated 30.04.2015 was passed confirming the earlier order. Questioning the same the present writ petition came to be filed.

3.The respondents have filed a counter affidavit opposing the prayer in the writ petitions.

4.It is obvious that the second respondent passed the impugned order by invoking Section 41 of the Tamil Nadu Value Added Tax Act, 2006. The said provision underwent an amendment with effect from 01.04.2012 vide Tamil Nadu Amendment Act 3 of 2012. Post amendment, the provision reads as follows:-

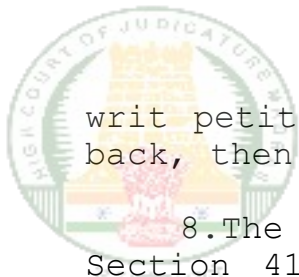
"41. Forfeiture of tax collected.-If any person or registered dealer collects any amount by way of tax or purporting to be by way of tax and his turnover for the year falls short of the taxable limit specified under this Act, the sum so collected shall be remitted to the Government and forfeited, after deducting the eligible input tax credit claim, if any, on the corresponding purchases."

5.Prior to the amendment, the provision read as follows:-

"41.Forfeiture of tax collected- If any person collects any amount by way of tax and his turnover for the year falls short of the taxable limit specified under this Act, the sum so collected shall be remitted to the Government and forfeited, after deducting the eligible input tax credit claim, if any, on the corresponding purchases."

6.There is no dispute that the assessment year on hand pertains to the pre-amendment period. The impugned order will have to be sustained, if I hold that pre-amendment provision will have to be applied. The impugned order will have to be set aside, if I hold that the post-amendment provision will have to be applied. Of course, in both the situations, there is no question of interfering with forfeiture of the tax collected and paid by the petitioner. Whether the forfeiture is to be made after deducting the eligible input tax credit availed on the corresponding purchase alone is the point for consideration.

7.The answer to these questions will depend upon how I construe the nature of amendment. If the amendment is prospective, then the



writ petition will have to be dismissed. If the amendment relates back, then the writ petition will have to be allowed.

8.The learned Special Government Pleader would contend that Section 41 of the Act came to be amended only with effect from 01.04.2012 and since the assessment year pertains to 2010-11, this Court ought not to retrospectively apply the amendment. She would also point out that any statutory amendment is prospective in the absence of express legislative intention to the contrary.

9.I am not persuaded by the contention advanced by the learned Special Government Pleader. As rightly pointed out by the learned counsel for the petitioner, the amendment in question is substitutive in nature. It is clear from the phraseology employed by the amending provision. Tamil Nadu Act 3 of 2012 published in Tamil Nadu Gazette No.36 dated 13.02.2012 reads as follows:-

"The following Act of the Tamil Nadu Legislative Assembly received the assent of the Governor on the 9th February 2012 and is hereby published for general information:-

ACT No. 3 of 2012.

An Act further to amend the Tamil Nadu Value Added Tax Act, 2006.

BE it enacted by the Legislative Assembly of the State of Tamil Nadu in the Sixty-third Year of the Republic of India as follows:-

1. (1) This Act may be called the Tamil Nadu Value Added Tax (Amendment) Act, 2012.

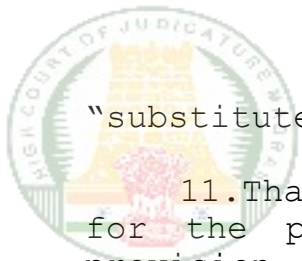
(2) It shall come into force on the 1st day of April 2012.

2. For section 41 of the Tamil Nadu Value Added Tax Act, 2006, the following section shall be substituted, namely:

—

"41. Forfeiture of tax collected.—If any person or registered dealer collects any amount by way of tax or purporting to be by way of tax and his turnover for the year falls short of the taxable limit specified under this Act, the sum so collected shall be remitted to the Government and forfeited, after deducting the eligible input tax credit claim, if any, on the corresponding purchases."

10.The Hon'ble Supreme Court in the decision reported in **2015 (1) SCC 1 (Commissioner of Income Tax (Central) -I, New Delhi Vs. Vatika Townsip Private Limited)** had exhaustively dealt with the nature of clarificatory amendment. I had occasion to respectfully follow the same in W.P.(MD)No.3744 of 2015 dated 20.12.2018 (Tvl Shanmugamari Timbers Vs. The Commercial Tax Officer, Chokkikulam Assessment Circle, Madurai-20). The intent and object of the ~~legislation~~ is clearly evident by the use of expression



"substituted".

11. That apart, as rightly pointed out by the learned counsel for the petitioner, there has been a lacuna in the statutory provision, as it was originally drafted. Any dealer who is hopeful of crossing the threshold limit will definitely collect tax and after paying the same, claim input tax credit. If he does not do so, he will face financial ruin. Hence, by way of abundant caution, a dealer will collect tax and also remit the same and claim input tax credit. The question that arose was how to deal, if he did not cross the ceiling limit. Of course, the provision as it is stood prior to the amendment proposed total forfeiture of the tax collected. That would have resulted in an inequitable situation. Realizing the same, the Government thought it fit to bring in an amendment. Therefore, an amendment of this nature should be taken as clarificatory nature and therefore, will have to be necessarily given retrospective application. A learned Judge of this Court in W.P.(MD)Nos.15103 of 2015 etc dated 30.08.2019 while dealing with Section 19(2)(5) of the Tamil Nadu Value Added Tax Act, came to the conclusion that if the benefit conferred by the amendment is restricted to those only from the date of substitution, that would result in discrimination against the transactions that had taken place during the prior period. Adopting the very same reasoning, I hold that the amendment made to Section 41 of the Tamil Nadu Value Added Tax Act, would also cover the transactions that had taken place prior to 01.04.2012.

12. In this view of the matter, the order impugned in the writ petition is set aside and the writ petition is allowed. No costs.

Sd/-

Assistant Registrar (RTI Act)

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/ /2021

Sub Assistant Registrar(CS)

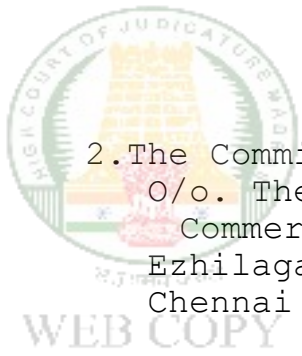
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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Secretary,
Department of Commercial Taxes and Registration,
Secretariat, St. George Fort,

<https://hcservices.tn.nic.in/hcservices/009>



2.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of
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Ezhilagam, Chepauk,
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3.The Deputy Commercial Tax Officer,
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(2/2)

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