BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.01.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)Nos.9222, 9223 & 9224 of 2015
and
MP(MD)Nos.1, 1 & 1 of 2015

T.Jackulin Jansi ... Petitioner in all writ petitions

Vs.

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

2.The Assistant Commissioner (CT),
Sivakasi-1, Assessment Circle,
No.458/3, Periakulam Colony,
Srivilliputhur Road,
Sivakasi - 626 123. ... Respondents in all writ petitions

Common Prayer: Writ petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings of the second respondent in TIN.33365961562/2009-10, TIN.33365961562/2010-11, TIN.33365961562/2011-12, respectively dated 09.04.2015 and quash the same.

in all cases :

For Petitioner : Mr.B.Rooban

For Respondents : Mr.Dhayalan, Government Advocate

ORDER

Heard the learned counsel on either side.

2.The petitioner in all these three writ petitions is one and the same. The issue raised in them is also one and the same. Only the assessment years are different. The petitioner has registered as a dealer with the second respondent. The petitioner opted to pay tax under the compounding assessment scheme under Section 3(4) of the Tamil Nadu Value Added Tax Act. One condition for availing the said benefit in the said scheme is that total and taxable turn over in an assessment year has to be below Rs.50.00 lakhs.

3.The petitioner's categorical stand is that at no point of time her turn over exceeded Rs.50.00 lakhs per assessment year. The petitioner's stand was sought to be rejected by clubbing the CST turn over of the petitioner.

4.It is well settled that the assessment under the TNVAT Act is one thing and the assessment under the CST Act is another. Both cannot be clubbed. The second respondent proceeded on a misconception. Therefore, the orders impugned in these writ petitions are liable to be quashed. However, in the counter affidavit, a stand has been taken that the petitioner has violated the terms and conditions of the scheme by engaging in inter-state sales. This stand taken in the counter affidavit is also liable to be rejected. This is because, vide order dated 11.12.2018 in WP (MD)No.19549 of 2015, I have held as follows :

> "4.I am unable to agree. As rightly pointed out by the learned counsel for the petitioners, Section 3(4)(a) of TN-VAT Act, 2006, only talks about the dealers effecting second and subsequent sales. It does not restrict the second and subsequent sales to intra state sales. In other words, it does not talks about inter State sales or intra State sales inrespect of second and subsequent sales. Thus, I am able to defer the internal evidence in the statutory scheme itself. The first purchase by the dealer who opts for the composition scheme will have to be from the dealer within the State. Regarding the second and subsequent sales, the statutory provisions is silent. When the statutory provision are silent, it is not open to the first respondent to curtail or confine the sweep of the provision. The first respondent by issuing a circular which is not statutory in character cannot seek to over ride the statutory scheme of things."

5.In view of the above, the orders impugned in these writ petitions are quashed. The writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

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

2.The Assistant Commissioner (CT),
Sivakasi-1, Assessment Circle,
No.458/3, Periakulam Colony,
Srivilliputhur Road, Sivakasi - 626 123.

+1 CC to Mr.B.ROOBAN, Advocate (SR-2106[F] dated 27/01/2021)

+1 CC to SPL GP (SR-2188[F] dated 27/01/2021)

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25.01.2021

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