BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.17041 of 2018
and
W.M.P.(MD)No.15017 of 2018

M/s.Subash Auto Stores,
Rep. by its Proprietor,
K.Murugan. ... Petitioner

Vs.

The State Tax Officer,
Palakkarai I Assessment Circle,
Commercial Tax Buildings,
Trichy-1. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records on the file of the respondent in TIN 33253521345/2011-12 dated 25.05.2018 and quash the same as illegal, arbitrary and against the proviso Section 3(4)(b) of the TNVAT Act, 2006.

For Petitioner : Mr.N.Sudalai Muthu
For Mr.S.Karunakar.

For Respondent : Mr.G.Arjunan,
Government Advocate.

ORDER

Heard the learned counsel on either side.

2.The writ petitioner is an assessee registered with the respondent. The case on hand pertains to the assessment year 2011-12. The petitioner had opted to come under the compounding tax regime under Section 3(4) of the Tamil Nadu Value Added Tax Act. As per the terms and conditions attached to the same, the petitioner's annual taxable turn over should not exceed Rs.50 Lakhs but during the middle of the year, the petitioner's turn over crossed the limit. As per the provision, the petitioner is expected to report the same within seven days. In the case on hand, the petitioner has not done so. Therefore, the impugned order came to be passed. The respondent in the impugned order has taxed the entire turn over at the regular rate. Questioning the same, this writ petition came to be filed.

3.The respondent has filed a detailed counter affidavit and the learned Government Advocate took me through the averments set out therein. In paragraph 4 of the counter affidavit, the respondent has stated that the petitioner had originally opted to pay tax at compounding rate of 0.5% under Section 3(4) of the Tamil Nadu Value Added Tax Act by filing returns in Form K for the assessment year in question. But total taxable turn over was quantified as Rs.67,84,617/-. The petitioner failed to inform the assessing authority in writing within seven days from the date on which the taxable turnover crossed Rs.50 Lakhs. It appears that the crossing of the limit took place some time in December, 2011. But the petitioner failed to inform the authority about the same within time. Only when the returns were scrutinized, the assessing officer noticed the anomaly. Therefore, he issued a pre-revision notice on 07.08.2012. A surprise inspection was also conducted by the Enforcement Wing Officials on 04.09.2012 and 05.09.2012. Only thereafter the petitioner filed the revised returns. Since the claim of the petitioner for input tax credit was beyond the time limit prescribed under Section 19(11) of the Act, the assessing authority chose to reject the same and passed an order dated 25.02.2013 by levying tax at 0.5% on the sales turn over to the extent of Rs.50 Lakhs and at 14.5% on the balance turnover of Rs.17,84,617/-. The learned Government Advocate thus submitted that the approach adopted by the respondent is very well in consonance with the statutory scheme and the impugned order does not call for any interference.

4.I carefully considered the rival contentions and went through the materials on record. Even though by the original assessment order dated 25.02.2013, the assessing authority levied tax only at 0.5% on the sales turnover upto Rs.50 Lakhs and at 14.5% for the balance turnover of Rs.17,84,617/-, by the impugned order, the entire turnover has been levied at the rate of 14.5%. This is clearly running contrary to the order dated 20.12.2018 passed by this Court in W.P.(MD)No.3744 of 2015 (Tvl Shanmugamari Timbers Vs. The Commercial Tax Officer, Chokkikulam Assessment Circle, Madurai-20). In the said decision, I held that the requirement on the part of the assessee to inform the assessing authority within the time stipulated time is only directory, since this requirement can be made good later. I had specifically held that this requirement for the dealer, who is under composition scheme should inform the assessing authority within seven days from the date on which the turnover had crossed the limit of Rs.50 Lakhs is directory. I had also held that the amendment made to Section 3(4)(b) of the Tamil Nadu Value Added Tax Act by Tamil Nadu Act 27 of 2011 has to be retrospectively applied. This amendment was construed by me as clarificatory in nature. Therefore, the assessee will be liable to pay tax only at the compounding rate of 0.5% upto Rs.50 Lakhs and he will come under the regular assessment under Section 3(2)(4) of the Act for the remaining turn over. In fact, the assessment authority had adopted the correct approach when he originally passed the order dated 25.02.2013 and he had erred only when giving effect to the order passed by the appellate authority. Since the order of the respondent is not in consonance with the decision of this Court in Tvl Shanmugamari Timbers' case, the order impugned in this writ petition is quashed. The writ petition is allowed. The respondent is directed to pass a fresh order after affording an opportunity of personal hearing to the petitioner herein. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AE)

// True Copy //

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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:

The State Tax Officer,
Palakkarai I Assessment Circle,
Commercial Tax Buildings,
Trichy-1.

+1 CC to M/s.SPL GP (SR-9684[F] dated 09/03/2021)

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-9543[F] dated 09/03/2021)

W.P(MD)No.17041 of 2018
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MA(CO)
TR(09.04.2021) 3P 4C