BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.03.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.5388, 5389 and 7886 of 2017
and
W.M.P.(MD)Nos.4315, 4316 and 6119 of 2017

M/s.Kannan Stores,
Represented by its Proprietor,
R.Ashokan ... Petitioner in all W.Ps

Vs.

The Commercial Tax Officer,
Pattukkottai - I, Assessment Circle,
CT Buildings, Pattukkottai,
Thanjavur District. ... Respondent in all W.Ps

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the respondent in TIN No.33744163167/2013 - 2014, dated 21.02.2017, TIN No.33744163167/2014 - 2015, dated 21.02.2017 and TIN No.33744163167/2015 - 2016, dated 30.03.2017, respectively, and quash the same as illegal, arbitrary, without jurisdiction and against the Circulars issued by the Commissioner of Commercial Taxes and also against the principles of natural justice.

(in all W.Ps)
For Petitioner : Mr.K.Soundararajan

For Respondent : Mrs.J.Padmavathi Devi,
Special Government Pleader.

<u>COMMON ORDER</u>

Heard the learned counsel for the writ petitioner and the learned Special Government Pleader for the respondent.

2.Though the writ petitions are three in number, the petitioner in all the three writ petitions is one and the same.

The assessment years are 2013-14, 2014-15 and 2015-16. The petitioner had registered himself as a dealer with the respondent. The petitioner had opted to pay tax at compounded rate under Section 3(4) of the Tamil Value Added Tax Act, 2006. As per the said scheme, the petitioner needed to pay tax only at the rate of 0.5% on his turn over. But then, the dealer opting to come under Section 3(4) of the Act ought to make his purchase only from the registered dealers within the State. But in the case on hand, the petitioner had purchased goods to the tune of Rs.1,06,212/- from one Tvl.Tulsi Corporation based in Bangalore. This was obviously a breach of the statutory condition. This came to light when there was an inspection of the petitioner's premises by the Enforcement Wing Officials on 29.09.2015 and 01.10.2015. Thereupon, the concession given to the petitioner to pay under the compounding scheme was withdrawn. The petitioner had to be assessed under Section 3(2) of the Act. While doing so, the Assessing Authority chose to levy tax at 14.5% on the turn over for the three assessment years. To this effect, pre-revision notice was issued and the petitioner gave his objections. Interestingly, the petitioner's stand appears to have found favour of the Assessing Authority, who sent a deviation proposal. But then, Joint Commissioner, Enforcement Wing, Trichy Division, rejected the deviation proposal on the ground that the account books were not properly maintained. Thereupon, the Assessing Authority confirmed the proposals set out in the notice. To this effect, the impugned orders were passed. Challenging the same, these writ petitions came to be filed.

3.The learned counsel for the petitioner reiterated the contentions set out in the affidavit filed in support of the writ petitions and wanted to me quash the impugned orders and remand the matter to the file of the respondent.

4.Per contra, the learned Special Government Pleader submitted that the writ petitioner did not avail the appellate remedy and that the impugned orders do not call for any interference.

5.I went through the rival contentions and went through the materials on record. In my view, the petitioner had taken a fair stand. The petitioner's counsel informs the Court that the petitioner does not challenge the order, whereby the concession available under Section 3(4) of the Act was withdrawn. The learned counsel for the petitioner would point out that the petitioner had been dealing in tax exempted goods, tax which are levied at the rate of 5% and goods taxed at the rate of 14.5%. All that the petitioner wants is that the turn over should be assessed based on the rate of tax that is applicable to the commodities concerned. He only contends that the respondent ought not to levy tax at a flat rate on all the commodities.

6.I find that the said stand is most fair and reasonable. I also find that though the writ petitions pertain to three assessment years, what the Enforcement Wing detected was only one solitary transactions of the year 2013-14 involving a dealer based out side State. As pointed out by the learned counsel for the petitioner, even this was found out from the account books maintained by the petitioner/assessee himself.

7.Recall of the concession cannot be faulted. What should be consequence is to be now determined. The consequence is that the petitioner slips out of the purview of Section 3(4) of the Act and falls under the net of Section 3(2) of the Act. Section 3(2) of the Act nowhere postulates that in such a case, the levy of tax should be at an uniform rate of 14.5 % on all the commodities. Since the petitioner has been dealing in various commodities, which are taxed at different rates, it is only just and fair that when reassessment is made, they are taxed accordingly. The respondent erred in levying uniform tax on all the commodities dealt with by the petitioner.

8.That apart, there is absolutely no basis for the Joint Commissioner to have come to the conclusion that account books were not being properly maintained. This appears to be an *ipse dixit* of the concerned authority. Since, the assessing authority himself has sent deviation proposal, that is certainly a fact that goes in favour of the petitioner herein.

9.In this view of the matter, the orders impugned in the writ petitions are quashed. The writ petitions are allowed. The matters are remitted to the file of the Assessing Authority. The Assessing Authority will levy tax based on the actual rate that is applicable to the commodities in question. If they are liable to be taxed at the rate 5%, they will be taxed accordingly. If they are liable to be taxed at the rate 14.5%, they will be taxed accordingly. In other words, the respondent will not levy a flat rate on all the commodities in question. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ias

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 Commercial Tax Officer,
Pattukkottai - I, Assessment Circle,
CT Buildings, Pattukkottai,
Thanjavur District.

+3 CC to Mr.K.SOUNDARARAJAN, Advocate (SR-8573,8569[F] dated 03/03/2021)

W.P(MD)Nos.5388, 5389 and 7886 of 2017
01.03.2021

KM (11.03.2021) 4P 5C