IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition Nos.5907, 5910 & 5912 of 2022
and W.M.P.Nos.6003, 6004, 6005, 6006, 6008 & 6010 of 2022

Tvl.Foot World,
Rep by its Proprietorix - S.Umadevi …Petitioner in all W.P's
No.28 A1, Basheer Mohamad Layout,
GandhiNagar, Krishnagiri-635 001

-Vs-

Assistant Commissioner (ST),
Krishnagiri-1 Assessment Circle,
Krishnagiri. …Respondent in all W.P's

Prayer in W.P.No.5907 of 2022 : Writ Petitions under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the respondent in his impugned proceedings made in TIN No.33083303140/2014-15 dated 21.10.2021 and quash the same.

Prayer in W.P.No.5907 of 2022 : Writ Petitions under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the respondent in his impugned proceedings made in TIN No.33083303140/2015-2016 dated 07.07.2021 and quash the same.

Prayer in W.P.No.5912 of 2022 : Writ Petitions under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the respondent in his impugned proceedings made in TIN No. 33083303140/2016-17 dated 21.10.2021 respectively and quash the same.

For Petitioner in all WPs: M/s.R.Hemalatha

For Respondent in all WPs: Mr.V.Prasanth Kiran,
Government Advocate

COMMON ORDER

The issue raised in all these writ petitions is one and the same. Hence, with the consent of the learned counsel for the petitioner as well as the learned Government Advocate appearing for the respondents, all these writ petitions were taken up together and are disposed of by this common order.

2. For the assessment year 2014, 15 and 2016, 17 already return has been filed by the petitioner who is the a dealer under the erstwhile Tamil Nadu Value Added Tax Act, 2006 (In short 'the VAT Act').

3. Subsequently, proceedings under Section 27 was invoked where according to the Revenue, under Section 3 (4) (a) of the TNVAT Act, if the taxable turnover crosses the limit of Rs.50 Lakhs per year, the assessee has to file return in Form-I instead of Form-K, as the Form-K return has to be filed for availing the benefit of paying the compounded rate of tax if the turnover is less than Rs.50 Lakhs per year.

4. In this context, for instance, for the assessment year 2014, 15 the sales turnover was Rs.56,15,751/- according to the Revenue therefore, it exceeds Rs.50 Lakhs limit. Hence, the return filed by the petitioner dealer for the year 2014, 15 in Form-K for paying the compounded rate of tax i.e 1% of the total taxable turnover is not correct as the said benefit cannot be availed by the petitioner, if the turnover crosses Rs.50 Lakhs. Therefore on that ground the impugned order has been passed for paying the tax due and penalty under Section 27(3) of the Act has also been imposed. Challenging all those three similar orders, the present Writ Petitions are filed.

5. Heard Mrs.R.Hemalatha, learned counsel for the petitioner who would submit that, insofar as the fixed rate of tax i.e compounded rate of tax at 1 % of the turnover is concerned, if it is Rs.50 Lakhs per year, then the petitioner dealer can avail the benefit and that benefit had been availed by the petitioner for all these three assessment years.

6. Assuming that if the total taxable turnover exceeds Rs.50 Lakhs as stated by the Revenue in the impugned order, even then the petitioner dealer is entitled to claim the benefit of paying compounded rate of tax at the rate of 1% of the taxable turnover for the first Rs.50 Lakhs and only for the reminder the rate of tax fixed by the Revenue under the provisions of the

TNVAT Act can be paid. Therefore, the present calculation made by the Revenue for directing the petitioner dealer to pay the rate of tax for the whole taxable turnover i.e Rs.56,15,751/- in the first case and similar tax liability in respect of other two cases is against the provisions namely under Section 3 (4) (b). Therefore, on that ground, the impugned orders are vitiated and liable to be interfered with, she contended.

7. However, Mr.V.Prashanth Kiran, learned Government Advocate appearing for the respondent submits that insofar as clause (b) of sub-section(4) of Section 3 of the TANVAT Act is concerned, no doubt, it gives such a relief to the taxpayer i.e dealer to avail the benefit of paying 1% compounded rate of tax for the first Rs.50 Lakhs that too by way of insertion of the words called "Such dealer may pay tax for each year on his turnover relating to taxable goods upto rupees fifty lakhs at such rate not exceeding one percent 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" by amendment under the Tamil Nadu Amendment Act, 27 of 2011 which comes into effect from 01.04.2012.

8. However, the learned Government Advocate appearing for the respondent point outs that the proviso to sub-clause(b) makes it clear that, such benefit can be availed by the dealer for one year and if such benefit is availed for a particular year, for subsequent years such benefits cannot be availed by the petitioner. Therefore, if at all the petitioner seeks for availing of such benefit under the said sub-clause (b) as amended from the year 2012 that benefit can be availed by the petitioner only for the first assessment year 2014-15 not for subsequent year 2015-16 and 2016-17. Therefore, the impugned orders cannot be found fault with on the said ground urged by the petitioner's side he contended.

9. However, the learned counsel for the petitioner dealer further submits that these issues can be gone into by the assessing authority wherein if there is any rectification that can be rectified for which an application in each case was filed under Section 84 of the TNVAT Act for rectifying defects and what are all the defects that have been pointed out in the application dated 07.02.2022 and therefore if that application is taken care of and decided on merits by the assessing authority where the issue now raised by the petitioner in these cases assailing the impugned order under the TNVAT Act can also be gone into and decided. Therefore, if a direction is given by this Court to the respondent assessing authority to decide the

Section 84 application on its own merits independently by giving an opportunity of being heard to the petitioner within a time frame that may be stipulated by this Court, the petitioner would be satisfied.

10. I have considered the submissions made by the learned counsel for the petitioner as well as the learned Government Advocate appearing for the respondent and have perused the materials placed before this Court.

11. Insofar as the plea raised by the petitioner by quoting Clause b of subsection (4) of Section 3 of the TNVAT Act is concerned, as has been rightly pointed out by the learned Government Advocate appearing for the respondent Revenue, though such benefit has been given to a dealer to avail the same for the first Rs.50 Lakhs that benefit can only be availed for one year because the language used in the proviso in Subclause (b) reads as follows.

> "Provided that such dealer whose turnover has reached Rs.50 Lakhs during the previous years shall not be entitled such option for subsequent years."

12. In view of this proviso, the petitioner dealer if at all wants to avail the benefit of paying the compounded rate of tax of 1% for the first Rs.50 Lakhs for the first assessment year ie., 2014-15 whether the petitioner would be entitled to claim the same benefit for the subsequent years also in view of the proviso mentioned above therein, is a question to be answered. But, so far this Court seems to have not given any interpretation to the said proviso. At this juncture, without going into the said plea raised by both sides, in view of the stand taken by the learned counsel for the petitioner to seek for direction to decide the Section 84 application, this Court is inclined to dispose of the Writ Petitions with the following order.

- That there shall be a direction to the respondent assessing authority to consider the Section 84 application under TNVAT Act submitted in each of the case by the petitioner dealer and decide the same on merits and in accordance with law independently uninfluenced by whatever observations made by this Court in this order, by giving an opportunity of hearing to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

- Till the disposal of Section 84 application, the impugned order of assessment shall be kept in abeyance.

- It is made clear that, depending upon out come of the decision of the assessing authority in the Section 84 application as directed above, the further course of action with regard to the impugned assessment order can be taken by the said respondent.

11.With the above observations and directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.
12.

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

anu/KST

To
Assistant Commissioner (ST),
Krishnagiri-1 Assessment Circle,
Krishnagiri.

+1 cc to M/s.R.Hemalatha Advocate sr18002
+1 cc to Special Government Pleader(Taxes) sr18298

W.P.Nos.5907, 5910 & 5912 of 2022

pm(co)
aa08/06/2022