BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.15567 of 2020
and
W.M.P.(MD)No.13073 of 2020

M/s.Nalini Cycle Mart,
Represented by its Proprietor,
Tmt.P.Maheshwari,
No.73B, Pazhamaneri Road,
Thirukkattupalli,
Thanjavur District – 613 104. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Thanjavur – II Assessment Circle,
II Floor, C.T.Buildings,
Sachidananda Moopanar Road,
Thanjavur – 613 001. ... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records of the Respondent in TIN No.33023821153/2014-2015 dated 04.09.2020 and quash the same as illegal, arbitrary and against the provisions of the Act, insofar as the levy of tax at 14.5% is concerned.

For Petitioner : Mr.K.Soundararajan

For Respondent : Mr.M.Prakash
Additional Government Pleader

O R D E R

The present Writ Petition is filed challenging the impugned order of the Respondent dated 04.09.2020 relating to the assessment year 2014-15, whereby the Petitioner has been denied the benefit of composition under Section 3(4) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as 'the Act').

2. The Petitioner is a dealer in Cycle and Spares and also dealing in Two Wheeler Spare Parts and is a registered dealer under the Act. Section 3(4) of the Act provides for an option whereby if the turnover of a dealer does not exceed Rs.50 Lakhs, the dealers may opt to pay tax under Section 3(4) of the Act subject to compliance with the other conditions set out therein. The rate of tax under Section 3(4) of the Act is 0.5%.

3. In the present case, the show cause notice was issued on the premise that the verification of other end dealer's Annexure-II reveals that the Petitioner had effected purchases to the extent of Rs.52,51,679/-. On that basis, the assessment was proposed by adding gross profit and freight charges and arrived at a total sales suppression of Rs.69,39,430/-.

4. It was thus submitted by the learned Additional Government Pleader for the Respondent that since the sale turnover exceeds Rs.50 Lakhs, the dealer's option for composition scheme is invalid and the dealers have to pay the tax due at appropriate rate in terms of the schedule to the Act. The relevant portion of the notice indicating the manner of arriving at the value of sales suppression is extracted hereunder:

Sales suppression as per other end Annexure-II	*52,51,679/-*
Sales suppression @ 14.5%	*31,84,605/-*
Add GP and freight charges @ 15%	*4,77,691/-*
Sales suppression 5%	*20,64,073/-*
Add AG and freight charges @ 15%	*3,10,061/-*
Total sales suppression	*69,39,430/-*
Total tax due	*6,46,890/-*

> *Since the sales suppression exceeds Rs.50 Lakhs, the dealer option for composition scheme is invalid and the dealers have to pay the tax due in appropriate rate.*

5. The Petitioner / dealer submitted its objection and on consideration of the same, the order of the assessment has been passed arriving at a total and taxable turnover of Rs.37,28,468/- for the year 2014-15. The relevant portion of the impugned order reads as under:

> *In view of the above, the dealer have not complied with the provisions of the Section 22(2) of the Act read with Rule 8 of the TNVAT Act, 2006. The total and taxable turnover for the year 2014-15 under Section 27(1)(a) of the TNVACT Act, 2006 is determined as detailed below:*

Total turnover redetermined	*Rs.37,28,468/-*
Taxable turnover determined	*Rs.37,28,468/-*

6. It is submitted by the learned counsel for the Petitioner that the reason that prompted the issuance of notice is that since the turnover exceeds Rs.50 Lakhs, the condition stipulated under Section 3(4) of the Act stood violated in this case, the dealer's option of composition was thus invalid under Section 3(4) of the Act. However, the order of assessment on

considering the objections submitted by the Petitioner would reveal that the total and taxable turnover was fixed at Rs.37,28,468/- which is within the monetary limit prescribed in terms of Section 3(4) of the Act. Hence, the reason which prompted the issuance of the notice no longer survives. Thus, the Petitioner is entitled to the benefit of composition under Section 3(4) of the Act. However, the impugned order after finding that the turnover is only Rs.37,28,468/- has levied tax at the rate of 14.5% on the entire turn over denying the benefit of composition at the rate of 0.5% under Section 3(4) of the Act.

7. The learned Additional Government Pleader appearing for the Respondent submitted that the Petitioner had not filed monthly 'K' returns for the year 2014-15 and they are not entitled for the benefit. There is an acknowledgment of filing of Form 'K' return, as would be evident from Page Nos.1 and 2 of the typed set of papers. In any event, the reason which prompted the issuance of the notice was the fact that the turnover exceeded Rs.50 Lakhs, which no longer survives after the assessment was passed, since the total and taxable turnover has been fixed at Rs.37,28,468/-

8. In view of the same, the denial of benefit of composition under Section 3(4) of the Act is arbitrary and without jurisdiction and is liable to be set aside. It is open to the Respondent to recover if there are any dues in accordance with law.

9. Accordingly, this Writ Petition is allowed and the impugned order passed by the Respondent dated 04.09.2020 is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

27.09.2022

Index : Yes / No
Speaking Order : Yes / No

vji

To

The Assistant Commissioner (ST),
Thanjavur – II Assessment Circle,
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MOHAMMED SHAFFIQ, J.

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