(2011) 11 MAD CK 0185

In the Madras High Court

Case No : Writ Petition No. 21517 of 2011 and M.P. No. 1 of 2011

Bharani Readymades APPELLANT

Vs

State of Tamil Nadu and Another RESPONDENT

Date of Decision : 25-11-2011

Acts Referred:

Tamil Nadu Value Added Tax Act, 2006 — Section 2(38), 2(41), 2(42), 22(2), 3

Citation : (2013) 60 VST 149

Hon'ble Judges : Chitra Venkataraman, J

Bench : Single Bench

Advocate : P. Rajkumar, for the Appellant; S. Kanmani Annamalai, Government Advocate (Taxes), for the Respondent

Final Decision : Allowed

Judgement

Chitra Venkataraman, J.—The petitioner seeks quashing of the proceedings dated April 4, 2011 relating to the assessment year 2009-10. The petitioner is a dealer in readymade garments. It is stated that since the petitioner''s turnover was below Rs. 50 lakhs and was making purchase from local registered dealer and effecting sales locally, in terms of section 3(4) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter called as "the Act"), the petitioner opted to pay tax at the rate not exceeding one per cent. As per section 3(4) of the Act, such option shall be exercised by the dealer within 30 days from the date of commencement of the Act; that the dealer, whose turnover is below Rs. 50 lakhs during the previous year on or before the 30th day of April of the year, has exercised such option and for the year 2008-09, the dealer has exercised the said option within thirty days from the date of commencement of the Tamil Nadu Value Added Tax (Second Amendment) Ordinance, 2008; the proviso to section states that such dealer shall not collect any amount by way of tax or purporting to be by way of tax; the dealer shall not be entitled to input-tax credit on the goods purchased by him and the dealer who purchased goods from such dealer shall not be entitled to input-tax credit on the goods purchased by him. Sub-section (b) states that when dealer''s turnover reaches Rs. 50 lakhs at any time during the previous year, as per the proviso therein, the dealer shall not be entitled to exercise such option for subsequent years. The dealer has to inform the assessing authority in writing within seven days from the date on which such turnover has crossed the turnover of Rs. 50 lakhs. Such dealer is liable to pay tax under sub-section (2) of section 3 on all his sales of Rs. 50 lakhs and above. In that case, he is entitled to the input-tax credit on the purchases made from the date, and on the stock available with him, the purchases of which has been made within ninety days before that date, on which such turnover has reached rupees fifty lakhs.

2. The petitioner states that for 2009-10, he opted for section 3(4) assessment and filed returns in form K and paid the tax at five per cent. The second respondent herein issued notice dated November 18, 2011 for the assessment year 2009-2010 by pointing out that the petitioner had effected purchases of readymade garments from outside the State during the assessment year 2009-10 and hence in view of section 3(4)(a) of the Act, the petitioner was not eligible for assessment u/s 3(4) of the Act. On the notice issued, the petitioner submitted his objections on February 24, 2011 stating that it did not make any inter-State purchase during the assessment year 2009-10 and as the turnover was below Rs. 50 lakhs, it was entitled to opt for assessment u/s 3(4) of the Act. The petitioner was also issued notices on the same day for the earlier assessment year. The petitioner states it purchased garments from other States for the earlier assessment years 2007-08 and 2008-09 for a small value only for Rs. 45,469 and Rs. 13,311, respectively. Immediately realising that it might not be entitled to the concessional levy u/s 3(4) of the Act, it filed form I and claimed input-tax credit of the tax paid on its purchases. Thereafter on March 24, 2011, it submitted another reply to the notice dated March 4, 2011 containing the same allegation that the claim for concessional levy for 2009-10 was not available on account of the petitioner''s inter-State purchase for 2007-08, 2008-09. On July 12, 2011, the respondent passed an order that on March 30, 2011, the petitioner was assessed u/s 22(2) of the Act. However, taking note of the inter-State purchase effected on the preceding two assessment years, the assessment was revised levying tax u/s 3(2) of the Act. The petitioner refuted the contention. Thereafter, on considering the claim of the assessee for the year 2009-2010, the assessment order was passed on August 4, 2011 holding that the petitioner be assessed u/s 3(2) of the Act attracting levy tax at the rate of 12.5 per cent. It is stated that in respect of the assessment years 2007-08 and 2008-09, the respondent passed the assessment order levying tax at 12.5 per cent. The petitioner states that the assessment order for the year 2009-10 rejecting the compounding rate of tax at five per cent on the ground the dealer was not eligible for assessment u/s 3(4) of the Act in respect of the previous years 2007-08 and 2008-09 is contrary to the provisions u/s 3(4) of the Act. The petitioner states that during the year under consideration, viz., 2009-10, the petitioner had not made any inter-State purchase. In the absence of any condition stipulated u/s 3(4) of the Act, rejecting the claim based on earlier

years'' results is contrary to law. Aggrieved by the same, the petitioner has come before this court.

3. On notice, the respondents have given instructions to the Government Pleader, wherein, it has been specifically averred that the petitioner had violated conditions u/s 3(4) of the Act since they had made inter-State purchase during 2007-08 and 2008-09. Considering the violations thus made, the prohibition u/s 3(4) of the Act to avail of concessional levy operated against the petitioner. On instructions, it has been further pointed out that the petitioner had filed form I in respect of assessment years 2007-08 and 2008-09 seeking eligibility for input-tax credit. However, as far as the present year is concerned, since the petitioner had violated conditions u/s 3(4) of the Act, the ineligibility u/s 3(4) operated.

4. The learned counsel for the petitioner points out that against the denial of input-tax credit, the petitioner has filed W.P. Nos. 21514 and 21515 of 2011 and the same was admitted and injunction was granted by this court. Section 3 of the Tamil Nadu Value Added Tax Act deals with levy of taxes on sale of goods. Section 2(42) defines "year" to mean financial year. Section 3(1) is the charging section generally levying tax on dealer whose total turnover for a year is not less than Rs. 5 lakhs. There are exceptions to this. We are not presently concerned about this. Section 3(2) states that subject to sub-section (1), a dealer shall pay tax on every sale made in the case of goods falling under Part B or C of the First Schedule within the State at the rate specified therein. Sub-section (4) provides for compounding scheme of taxation. It reads as under:

(4). (a) Notwithstanding anything contained in sub-section (2), but subject to the provisions of sub-section (1), every dealer, who effects second and subsequent sales of goods purchased within the State, whose turnover relating to taxable goods, for a year, is less than rupees fifty lakhs, may, at his option, instead of paying tax under sub-section (2), pay a tax, for each year, on his turnover relating to taxable goods at such rate not exceeding one per cent, as may be notified by the Government. Such option shall be exercised by a dealer,--

(i) who commences business, within thirty days from the date of commencement of the business;

(ii) whose turnover is below rupees fifty lakhs during the previous year, on or before the 30th day of April of the year for which he exercises such option;

(iii) for the year 2008-09, within thirty days from the date of commencement of the Tamil Nadu Value Added Tax (Second Amendment) Ordinance, 2008:

Provided that such dealer shall not collect any amount by way of tax or purporting to be by way of tax:

Provided further that such dealer shall not be entitled to input-tax credit on the goods purchased by him:

Provided also that the dealer who purchased goods from such dealer shall not be entitled to input-tax credit on the goods purchased by him.

(b) if the turnover, relating to taxable goods of a dealer paying tax under clause (a), in a year, reaches rupees fifty lakhs at any time during that year, he shall inform the assessing authority in writing within seven days from the date on which such turnover has so reached. Such dealer is liable to pay tax under sub-section (2) on all his sales of rupees fifty lakhs and above and he is entitled to the input-tax credit on the purchases made from the date, and on the stock available with him, the purchases of which has been made within ninety days before the date, on which such turnover has reached rupees fifty lakhs:

Provided that such dealer whose turnover has reached rupees fifty lakhs during the previous year shall not be entitled to exercise such option for subsequent years.

5. Thus a dealer effecting second and subsequent sale within the State having a business relating to taxable goods less than Rs. 50 lakhs may pay tax at his option, for each year on his turnover relating to taxable goods at the rate not more than 0.5 per cent. The option to pay at the compounded rate has to be exercised (a) within 30 days from the date of commencement of business, (b) in cases of assessee whose turnover during the previous year is less than Rs. 50 lakhs he has to exercise the option on or before 30th of April of the year for which he exercises the option for the year 2008-09 within 30 days from the date of commencement of the Tamil Nadu Value Added Tax Ordinance, 2008. The proviso to sub-section (b) states that if a dealer''s turnover reached Rs. 50 lakhs during the previous year, he shall not be entitled to exercise the option for, subsequent year. Going by the, scheme of the Act, that tax is payable in respect of sales effected during the year meaning financial year starting from April, to 31st March, the previous year herein refers to the year previous to the financial year under consideration. Thus once the assessee crosses Rs. 50 lakhs in any previous year, the benefit of availing of the compounded rate for subsequent year would not be there at all.

6. Section 3(4) of the Act refers to the entitlement of assessee to have the benefit of compounded rate at 0.5 per cent subject to his turnover relatable to taxable goods being less than Rs. 50 lakhs. The definition of "turnover" given u/s 2(41) refers to aggregate amount for which goods are bought or sold, or delivered or supplied. Given the fact that the turnover assessed relates to taxable goods, the same has relevance to taxable turnover. As per section 2(38) of the Act, "taxable turnover" means the turnover on which the dealer has to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed. Thus as far as section 3(4) is concerned, when the taxable turnover is less than Rs. 50 lakhs, he is entitled to have the benefit of compounded rate u/s 3(4)(a) of the Act. When the taxable turnover for a financial year exceeded Rs. 50 lakhs, the assessee loses the benefit of section 3(4) for application of the reduced rate. As far as the present case is concerned, this is not the case of the Revenue that taxable turnover of the petitioner

exceeded Rs. 50 lakhs in this year, or for that matter in the previous year, to result in the rejection of the claim for compounded rate. On the other hand, the only objection shown in the order passed by the second respondent is that the petitioner had effected inter-State purchase in the previous year, which dis-entitled the petitioner from having the benefit of compounded assessment u/s 3(4) of the Act. I do not find any such provision, as stated by the respondent, which disentitles an assessee from getting the benefit of section 3(4) of the Act. The section states that an assessee is entitled to the benefit of compounded rate of tax on the taxable turnover of the dealer relating to second and subsequent sale and that the taxable turnover of the year shall be less than Rs. 50 lakhs. The other condition prescribed therein makes no reference at all to the previous years having inter-State sale. In fact, the reference to previous year turnover has reference only as regards the taxable turnover more than Rs. 50 lakhs, which results in the non-applicability of the provision on the claim for compounded levy. Thus on the mere ground of the petitioner having inter-State purchase in the earlier years, the claim for compounded rate was rejected.

7. A perusal of the order of the respondent shows that nowhere it is stated therein that the petitioner''s turnover during the previous years relevant to the year under consideration crossed Rs. 50 lakhs, or for that matter this year. In the above circumstances, in the absence of any provision like the one referred to by the assessing officer on the previous year turnover having inter-State sales turnover too to disentitle the petitioner from claiming compounded rate of tax, I do not find any legal support to the contention of the respondent that the petitioner is not entitled to have the benefit of the compounded rate of tax as u/s 3(4) of the Act. So long as the petitioner has the taxable turnover for the year under consideration at less than Rs. 50 lakhs and so too during the immediate previous year, the taxable turnover of that year remained at less than Rs. 50 lakhs, the mere fact of his earlier years having inter-State purchase, per se, would not go against the claim of the petitioner to have the assessment done u/s 3(4) of the Act.

8. The learned counsel for the petitioner pointed out that the taxable turnover in respect of the previous assessment years, viz., 2007-08 and 2008-09, even as per the assessment order dated August 3, 2011 was Rs. 37,32,644 and for 2008-09, is Rs. 44,96,930. Thus agreeing with the submission of the petitioner, there being no provision to deny the benefit of section 3(4) of the Act, on the mere ground of the petitioner''s inter-State purchase in the previous years, I do not find any legal support in the order of the second respondent denying the benefit of section 3(4) of the Act for the assessment year 2009-10. The second respondent is hereby directed to apply provisions contained u/s 3(4) of the Act subject to the petitioner satisfying all the other requirements of the Act. In the result, the writ petition stands allowed. No costs. Consequently, connected M.P. No. 1 of 2011 stands closed.

