(2014) 07 MAD CK 0090

In the Madras High Court

Case No : Writ Petition No. 17473 of 2014 and M.P. Nos. 1 and 2 of 2014

Metro City Foundation APPELLANT

Vs

The Assistant Commissioner RESPONDENT

Date of Decision : 03-07-2014

Acts Referred:
Tamil Nadu Value Added Tax Act, 2006 — Section 27, 3(4), 6

Citation : (2014) 07 MAD CK 0090

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Judgement

B. Rajendran, J.—The petitioner has come up with the present Writ Petition seeking to quash the impugned order dated 27.11.2013 passed by the respondent in TIN No. 33612182838/2009-10 as the same is contrary to the principle laid down by this Court in the judgment reported in Bharani Readymades Vs. State of Tamil Nadu and Another, .

2. According to the petitioner, he had availed the benefit of compounding system of assessment in accordance with Section 6 of the Tamil Nadu Value Added Tax Act, 2006 and accordingly, the order of original assessment was completed for the assessment year 2009-10. While so, the petitioner was issued with a notice for revision of assessment under Section 27 of the Act on 28.10.2013 on the ground that per Section 6 of the Act, the dealer who opted for compounded rates are prohibited for effecting inter-state purchases and the petitioner had since been effected inter-state purchases for the earlier assessment years, viz., 2007-08 and 2008-09, the option already availed under Section 6 of the Act is proposed to be revised for the assessment year 2009-10. The petitioner was granted time for filing reply and accordingly, he has filed his reply, but, the same was simply rejected and the impugned order was passed, thereby, confirming the proposal. Challenging the same, the petitioner has filed this Writ Petition.

3. The learned counsel appearing for the petitioner would rely on the decision of this Court reported in Bharani Readymades Vs. State of Tamil Nadu and Another,

to substantiate his contention that if a dealer had made inter-state purchases in earlier years, it is not a ground to deny dealer the benefit of paying tax at compounded tax.

4. The learned Additional Government Pleader appearing for the respondent would fairy submit that the decision relied on by the learned counsel for the petitioner will be squarely applicable to the facts of the present case and therefore, the matter may be remitted back to the respondent and the respondent may in turn be directed to apply the provisions contained under Section 3(4) of the Act subject to the petitioner satisfying all the other requirements of the Act.

5. Heard both sides. By consent, the main Writ Petition itself is taken up for final disposal at the stage of admission.

6. At this juncture, it is worthwhile to extract the relevant portion of the judgment of this Court reported in Bharani Readymades Vs. State of Tamil Nadu and Another, , wherein, this Court has held in Paragraph Nos. 8 and 9 as under:-

8. 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 under Section 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 under Section 3(4) of the Act.

9. 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 under Section 3(4) of the Act subject to the petitioner satisfying all the other requirements of the Act.

7. Following the decision cited supra, which is squarely applicable to the facts of the present case, I am inclined to set aside the impugned order. This Writ

Petition is allowed and the impugned order in respect of the assessment year 2009-10, dated 27.11.2013, is set aside. This matter is remitted back to the respondent to decide the same afresh by applying the principles laid down in the judgment of this Court reported in Bharani Readymades Vs. State of Tamil Nadu and Another, . Consequently, connected Miscellaneous Petitions are closed. No costs.