

(2010) 04 MAD CK 0360

Madras High Court

Case No: Writ Petition No"s. 6255 and 6256 of 2010 and M.P. No"s. 1 and 1 of 2010

C.K.G. Agencies

APPELLANT

Vs

Assistant Commissioner (CT) Fac
Avinashi Assessment Circle,
Coimbatore

RESPONDENT

Date of Decision: April 22, 2010

Acts Referred:

- Tamil Nadu General Sales Tax Act, 1959 - Section 3(2), 3(4)

Citation: (2012) 54 VST 501

Hon'ble Judges: Chitra Venkataraman, J

Bench: Single Bench

Advocate: S. Ramanathan, for the Appellant; R. Mahadevan, Additional Government
Pleader, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Mrs. Chitra Venkataraman, J.

The petitioner herein opted to pay compounding tax as per section 3(4) of the Tamil Nadu Value Added Tax Act, 2006, as the assessee expected the turnover for the year 2007-08 as between Rs. 10 lakhs and Rs. 50 lakhs. The petitioner filed the monthly returns in form K disclosing the turnover and corresponding tax at 0.5 per cent. It is stated that the petitioner's turnover, however, exceeded Rs. 50 lakhs and hence, not eligible for compounded rate of tax at 0.05 per cent. The petitioner filed the form I monthly returns from April, 2007 to March, 2008 by taking credit of the tax paid on the purchases during the relevant assessment year 2007-08 and after adjusting the input-tax credit, it paid the tax u/s 3(2) of the Tamil Nadu Value Added Tax Act, 2006. On December 18, 2009, the respondent determined the total and taxable turnover at Rs. 57,92,100 by accepting the turnover reported by the petitioner, but took the input-tax credit for the month of March, 2008 alone. The petitioner's grievance is that the said order is contrary to the circular issued by the Commissioner dated

August 29, 2007, wherein, it is clarified that if the turnover of the assessee exceeded Rs. 50,00,000 in the middle of the year, then the assessee would not be assessed at the compounded rate of tax u/s 3(4) of the Tamil Nadu Value Added Tax Act, 2006 and he has to pay higher rate of tax and eligible for input-tax credit for the purchases made from the beginning of the year. The said clarification given in the case of individual assessee is applicable to the case of the petitioner also. Consequently, the order suffered an illegality. The petitioner made a representation by way of rectification petition on February 9, 2010, pointing out to the clarification dated August 29, 2007 and requested the respondent to cancel the demand. By proceedings dated February 23, 2010, the respondent rejected the prayer by stating that it is open to the petitioner to get necessary relief from the appropriate forum against the order passed by the assessing authority. The petitioner submits that having regard to the clarification given by the Commissioner, which is binding on the assessing officer, once the petitioner crosses the turnover of Rs. 50,00,000, he is eligible for the benefit of input-tax credit. It is not denied by the respondent that the petitioner had paid tax at four per cent and 12.5 per cent for every month as per section 3(2) of the Tamil Nadu Value Added Tax Act, 2006. The learned counsel appearing for the petitioner pointed out to section 3(4) of the Tamil Nadu Value Added Tax (Second Amendment) Act, 2008 to substantiate his case as regards the availing of input-tax credit in respect of turnover exceeding Rs. 50,00,000 and the proviso introduced only under the Tamil Nadu Act 49 of 2008, that the said proviso has no application to the present case. Hence, the petitioner is entitled to have the benefit of input-tax credit, once the turnover exceeds Rs. 50,00,000 limit. Going by the Commissioner's clarification, the benefit of input-tax credit has to be extended to the assessee like the petitioner, the moment the petitioner's turnover exceeded Rs. 50,00,000 and that he would not be eligible to be assessed u/s 3(4) of the Tamil Nadu Value Added Tax Act.

2. It is seen that in the rectification petition filed, the petitioner pointed out to the turnover of the year crossing Rs. 50,00,000 and that the assessment made by the officer was going against the Commissioner's clarification dated August 29, 2007 and hence, the same was liable to be set aside. On the admitted facts as to the petitioner's turnover is more than Rs. 50 lakhs, the Commissioner's clarification is binding on the assessing authority, it is necessary that the assessment has to be reviewed in accordance with law as well as the clarification. It however has to be noted that in the rectification petition filed by the petitioner, there are hardly any details as to the month when the turnover exceeded Rs. 50,00,000 limit for the purpose of granting the benefit of input-tax credit.

3. In the circumstances, the order passed by the respondent is set aside and the petitioner is hereby directed to furnish the details of the turnover crossing Rs. 50,00,000. On such furnishing of the details, the respondent shall take into account the Commissioner's clarification and pass orders in accordance with law. With the above observation, the writ petitions are disposed of. No costs. Consequently,

connected MPs are closed.