IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.04.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.9500 of 2015
&
M.P.No.1 of 2015

Thiru.S.Philip
Civil Works Contractor
1715, North Street
Pattanamkurichi (PO)
Andimadam (Via)
Udayarpalayam (TK) - 621 801
Ariyalur District ... Petitioner

Vs.

The Commercial Tax Officer
Jayankondam
Ariyarlur District ... Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the respondent in TIN:33433621932/2007-2008 dated 25.02.2015 and quash the same as without jurisdiction, without authority of law and barred by limitation as prescribed under Section 27(1)(a) of the Tamil Nadu Value Added Tax Act, 2006 as it stood then.

For Petitioner : Mr.A.Chandrasekaran

For Respondents : Mr.Kanmani Annamalai
Additional Government Pleader (Tax)

O R D E R

The petitioner has filed this writ petition against the impugned order passed by the respondent under Section 27(1)(a) of the Tamil Nadu Value Added Tax Act, 2006 dated 25.02.2015 for the Assessment Year 2007-2008, which was received by the petitioner on 27.02.2015.

2. The petitioner contended that the assessment period relates to 2007-2008 and the original assessment order passed on 09.03.2009 and revision can be done only prior to 08.03.2014 within a period of 5 years in terms of Section 27(1)(a) of the Tamil Nadu Value Added Tax as it stood then. For the sake of convenience, Section 27 is extracted below:

27. Assessment of escaped turnover and wrong availment of input tax credit (1) (a) Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of sub-section (3), at any time within a period of 1[six years from the date of assessment], determine to the best of its judgment the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary.

NOTES

1. Substituted for the expression "five years from the date of assessment order by the assessing authority" by Act No.23 of 2012 effective from 19.6.2012.

(b) Where, for any reason, the whole or any part of the turnover of business of a dealer has been assessed at a rate lower than the rate at which it is assessable, the assessing authority may, at any time within a period of 2 [six years from the date of assessesment], reassess the tax due after making such enquiry as it may consider necessary.

NOTES

1. Substituted for the expression "five years from the date of order of assessment by the assessing authority" by Act No.23 of 2012 effective from 19.6.2012.

(2) Where, for any reason, the input tax credit has been availed wrongly or where any dealer produces false bills, vouchers, declaration certificate or any other documents with a view to support his claim of input tax credit or refund, the assessing authority shall, at any time, within a period of 2[six years from the date of assessesment], reverse input tax credit availed and determine the tax due after making such a enquiry, as it may consider necessary:

NOTES

1. Substituted for the expression "five years from the date of order of assessment" by Act No.23 of 2012 effective from 19.6.2012.

Provided that no order shall be passed under sub-sections (1) and (2) without giving the dealer a reasonable opportunity to show cause against such order.

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(3) In making an assessment under clause (a) of sub-section (1), the assessing authority may, if it is satisfied that the escape from the assessment is due to wilful non-disclosure of assessable turnover by the dealer, direct the dealer, to pay, in addition to the tax assessed under clause (a) of sub-section (1), by way of penalty a sum which shall be -

(a) fifty per cent of the tax due on the turnover that was wilfully not disclosed if the tax due on such turnover is not more than ten per cent of the tax paid as per the return;

(b) one hundred per cent of the tax due on the turnover that was wilfully not disclosed if the tax due on such turnover is more than ten per cent but not more than fifty per cent of the tax paid as per the return.

(c) one hundred and fifty per cent of the tax due on the assessable turnover that was wilfully not disclosed, if the tax due on such turnover is more than fifty per cent of the tax paid as per the return;

(4) in addition to the tax determined under sub-section (2), the assessing authority shall direct the dealer to pay as penalty a sum -

(i) which shall be in the case of first such detection fifty per cent of the tax due in respect of such claim; and

(ii) which shall be in the case of second or subsequent detections, one hundred per cent of the tax due in respect of such claim:

Provided that no penalty shall be levied without giving the dealer a reasonable opportunity of showing cause against such imposition.

(5) The powers under sub-sections (1) and (2) may be exercised by the assessing authorities even though the original order of assessment, if any, passed in the matter has been the subject matter of an appeal or revision.

(6) In computing the period of limitation for assessment or re-assessment under this section, the time during which the proceedings for assessment or re-assessment remained stayed under the orders of a Civil Court or other competent authority shall be excluded.

(7) In computing the period of limitation for assessment or re-assessment under this section, the time during which any appeal or other proceeding in respect of any other assessment or reassessment is pending before the High Court or the Supreme Court involving a question of law having a direct bearing on the assessment or re-assessment in question, shall be excluded.

(8) In computing the period of limitation for assessment or re-assessment under this section, the time during which any appeal or proceeding in respect of any assessment or re-assessment of the same or part of the turnover made under any other enactment was pending before any appellate or revisional authority or the High Court or the Supreme Court shall be excluded.

3. According to the petitioner, the revision order was passed on 25.02.2015, beyond 5 years and the authority has taken note of the omitted provision that the period of limitation is six years and passed the order which is not permissible in law. It is further submitted by the petitioner that beyond the period of limitation, no proceedings can be initiated and the amended Act 23

of 2012 increasing the period to six years from the date of assessment came into effect only from 19.06.2012 as could be seen from the provision which is extracted supra. It is further contended by the learned counsel for the petitioner that the respondent cannot apply the amended provision for the assessment period which is already over. In support of his contention, the learned counsel for the petitioner relied on the decision of this Court in Universal Abrasives v. Commercial Tax Officer, Manali Asessment Circle, Chennai reported in (2014) 68 VST 386 (Mad) , wherein this Court has held as follows:

> "allowing the appeal, that under Section 16(1) as it stood prior to amendment where the whole or any part of the turnover of business of a dealer had escaped assessment of tax, the assessing officer had power to revise the assessment at any time within a period of five years from the expiry of the year to which the tax related. In the present case, the assessment year was 1997-98 and the period of five years expired on March 31,2003. The proceedings issued on August 23, 2004 were well beyond the period of five years and clearly barred by limitation. The amended provision which came into effect from July 1, 2002 and under which the limitation period commenced from the date of final assessment order, came into effect prospectively and not retrospectively. There is nothing in the amended provision of Section 16(1)(a) to show that it was intended to operate retrospectively."

4. In view of the principle laid down in the decision mentioned supra, this Court has no other option except to set aside the impugned order and this Court is not inclined to remit the matter back to the authority concerned as contended by the respondent.

5. In the result, the writ petition is allowed and the impugned order dated 25.02.2015 made in TIN: 33433621932/2007-2008 is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gpa

To

The Commercial Tax Officer
Jayankondam
Ariyarlur District

+ 1 cc to Mr.A. Chandrasekar, Advocate SR.18414

+ 1 cc Government Pleader Sr.18643

JSV(CO)
EU 22 .04.2015

W.P.No.9500 of 2015 &
M.P.No.1 of 2015