IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.08.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.31962 of 2015
and
M.P.No.1 of 2015

M/s. Sri Ayyappa Oil Mills,
No.2/18-A, Main Road,
Nagamma Pudur,
Annur - 641 653. ...Petitioner

Vs.

The Assistant Commissioner (CT)
Avinashi Assessment Circle,
Avinashi - 641 654. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the case from the file of the respondent and to quash the impugned notice of the respondent in TNGST 223990/1993-94 to 1994-95, dated 13.07.2015.

For Petitioner : M/s.Lakshmi Sriram

For Respondent : M/s.Vasudha Thiagarajan
Additional Government Pleader

O R D E R

Heard M/s.Lakshmi Sriram, learned counsel appearing for the petitioner, and M/s.Vasudha Thiagarajan, learned Additional Government Pleader, appearing for the respondent, and perused the materials placed on record, the counter affidavit filed by the respondent, and the reply affidavit filed by the petitioner.

2. The petitioner has challenged the notice of demand, dated 13.07.2015, calling upon the petitioner to pay the tax for the assessment years, 1993-94 to 1994-95, under the provisions of Tamil Nadu Value Added Tax Act, 2006.

3. Primarily, the impugned order has been challenged on two grounds. Firstly, the impugned demand has been issued after 20 years, without issuing any notice to the petitioner, and without serving any order of assessment. Secondly, it is contended that, even assuming that the respondent is entitled to take action by revising the assessment, under Section 16 of the Act, it has to be done within the time, as prescribed under the statute and the initiation of present action after 20 years is wholly without jurisdiction.

4. In the counter affidavit filed by the respondent, it is stated that the final orders of assessment was passed on 29.11.1995, and was duly served on the Partner of the Firm, viz., Mrs.Geetha on 14.12.1995, by registered post with acknowledgment due. The letter sent to the other Partner, Mr.Rajamanickam, by registered post, was returned to the sender, as the addressee was out of station. The assessment order sent to the Mill premises was returned with an endorsement "Door Locked". To support such contentions, original files were circulated to this Court, and the learned Additional Government Pleader pointed out that the postal acknowledgment shows that the letter was delivered on 14.12.1995 on the Partner, Mrs.Geetha.

5. The learned counsel appearing for the petitioner disputed the postal acknowledgment, and filed a reply affidavit to the counter affidavit, denying and disputing the signature as contained in the postal acknowledgment. From the postal acknowledgment card, it is seen that the year of delivery is mentioned as '1991', whereas, there is another date, said to be the date of receipt of the registered letter, as 14.12.1995, and despatch seal appears to be '23.12.1995'. The signature found in the postal acknowledgment card was compared with the admitted signature of Mrs.K.Geetha, and this Court is, prima facie, of the view that the signature is not that of hers. Be that as it may, the respondent now seeks to enforce the impugned demand based on the revision of assessment under Section 16 of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter, referred to as 'TNGST Act').

6. Admittedly, this impugned proceeding was without proper opportunity to the petitioner, and it is also barred by limitation. Above all, it has to be pointed out that the respondent would be entitled to effect recovery of the tax arrears, even assuming it is due only within a reasonable time, and considering somewhat similar provisions under the TNGST Act, the Hon'ble Supreme Court in the case of (State of Punjab and

others Vs. Bhatinda District Cooperative Milk Producers Union Ltd.,) reported in (2007) 11 S.C.C. 363, observed that, 'The Revisional Authority, being a creature of the statute, while exercising its revisional jurisdiction, would not be able to determine as to what would be the reasonable period for exercising the revisional jurisdiction in terms of Section 21 (1) of the Act'.

7. Thus, considering the facts and circumstances of the case on hand, this Court has no hesitation to hold that the impugned order is barred by limitation, and the action initiated for recovery of dues after about 20 years is highly unreasonable, rendering the impugned demand as unsustainable in the eye of law.

8. In the light of the above discussion, the Writ Petition is allowed, impugned order is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT)
Avinashi Assessment Circle,
Avinashi - 641 654.

+1cc to M/S.Lakshmi Sriram, Advocate Sr.48819
+1cc to the Special Government Pleader Sr.48936

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srg 20/09/2016