

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.7.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.32664 of 2015 & MP.No.1 of 2015

M/s.Sri Ramu Trading Company,
rep.by its Proprietor,
14, Sathy Road Erode-3.Petitioner

Vs

The Assistant Commissioner (CT),
Sathy Road Assessment Circle,
Erode.Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the impugned proceedings of the respondent in TNGST 688025/1994-95/A3 (R.O.C.No.1138/2005/A3) dated 22.9.2015 and quash the same as being issued without jurisdiction and authority of law and also issued beyond the prescribed period of limitation of five years.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.Manohar Sundaram, AGP

ORDER

Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner was a manufacturer in ground nut oil and oil cakes, registered on the file of the respondent under the provisions of the erstwhile Tamil Nadu General Sales Tax Act, 1959.

3. The order impugned in this writ petition is only a notice dated 22.9.2015. Under normal circumstances, a Writ Court will not interfere with any notice where the petitioner had been granted an opportunity to submit their objections. But, the facts of the case are so shocking that this Court is inclined to interfere with the impugned notice.

4. This conclusion is supported by the following reasons :

Against the orders of assessment under the said Act for the years 1994-95 and 1995-96, the petitioner filed original petitions in O.P.Nos.4027 and 4028 of 1997 before the Tamil Nadu Taxation Special Tribunal. The Tribunal, by a common order dated 8.12.1997, allowed the said petitions setting aside the orders of assessment and further granting liberty to pass fresh orders. As already pointed, that was a common order for two assessment years namely 1994-95 and 1995-96.

5. So far as the assessment for the year 1995-96 is concerned, the Assessing Officer initiated fresh proceedings and passed an assessment order on 19.1.2000 and it appears that as against the same, the petitioner preferred an appeal in A.P.No.146 of 2000 and the Appellate Assistant Commissioner, passed final orders on 17.1.2001 by modifying the assessment order and the petitioner is satisfied with the same and the matter attained finality.

6. So far as the assessment for the year 1994-95 is concerned, no proceedings were initiated by the Assessing Officer to pass fresh orders in terms of the liberty granted by the Tribunal. For the first time in the year 2007, the petitioner was served with a recovery notice calling upon them to pay tax, penalty and interest for the assessment year 1994-95. This is accompanied by a notice of attachment. Immediately, the petitioner sent their objections on 22.10.2007. It is to be pointed out that as on date, for the assessment year 1994-95, there is no assessment made on the petitioner and after the order passed by the Tribunal, the Assessing Officer did not take any action. Even after the objections made by the petitioner, no action was initiated and after about 3 months, i.e. on 10.1.2008, a notice was issued to the petitioner calling upon them to produce the copy of the order of the Tribunal.

7. This was readily obliged by the petitioner by sending their objections dated 18.1.2008 along with the copy of the order of the Tribunal. Thereafter, the matter went into cold storage and for five years nothing happened and all of a sudden, on 4.2.2013, the petitioner was served with the demand. Immediately, the petitioner submitted elaborate objections dated 22.2.2013. However, without reference to any of the averments contained therein, after about two years, the impugned notice has been issued. The manner, in which, the petitioner has been dealt with is wholly unfair.

8. In the written instructions given by the respondent to the learned Special Government Pleader, the Department, while accepting that it has taken 18 years, would blame the petitioner for not cooperating with the Department.

9. The stand taken in the written instructions is absolutely perverse. The successive officers, who occupied the post of Assessing Officer of the petitioner, have abdicated their responsibility and failed to protect the interests of the Revenue, which inaction enured to the benefit of the petitioner.

10. It is submitted by the learned Additional Government Pleader that the Tribunal, while passing the order on 8.2.1997, did not fix any outer time limit. Therefore, the Department was justified even to initiate action as of now.

11. This argument is stated to be rejected for the simple reason that the Tribunal did not direct the respondent to redo the assessment. But, the Tribunal, while setting aside the orders of assessment, granted liberty to the respondent to pass fresh orders. Therefore, it was for the respondent to pass orders in accordance with law and in any event, the period of 18 years can hardly be stated to be a reasonable period to reopen the settled proceedings, which attained finality as early as 8.12.1997.

12. For all the above reasons, the impugned notice or any further proceedings in respect of the assessment year 1994-95 is wholly unsustainable.

13. Accordingly, the writ petition is allowed and the impugned notice is quashed. No costs. Consequently, the above WMP is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
The Assistant Commissioner (CT),
Sathy Road Assessment Circle, Erode.

+1 cc to Mr.P.Rajkumar Advocate sr 43171

+1 cc to the Special Government pleader taxes sr 43346

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