IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.34169 of 2015
and
M.P.No.1 of 2015

M/s.Javeed Ahamed & Co.,
Rep. by its Prop. S.C.Javeed Ahmed,
1/166, Cutchery Road,
Valayampet, Vaniyambadi,
Vellore District. ... Petitioner

vs.

The Assistant Commissioner (CT),
Vaniyambadi Assessment Circle,
Vaniyambadi, Vellore District. ... Respondent

Petition filed under Article 226 of The Constitution of India praying to issue a writ of Certiorari, calling for the records of the respondent in his proceedings in TIN:33384640654/06-07 dated 12.10.2015 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan

For Respondent : Mr.K.Venkatesh

ORDER

Heard Mr.S.Ramanathan, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate, who accepts notice on behalf of the respondent. I have carefully considered the submissions made on either side and perused the materials placed on record including the written instructions given by the respondent to the learned Government Advocate vide letter dated 16.09.2016.

2.The impugned order of assessment has been challenged on the ground that it is beyond the period of limitation prescribed under the provisions of the Tamil Nadu Value Added Tax Act (TNVAT Act). The impugned assessment relates to the year 2006-07. The undisputed facts are that the return submitted by the petitioner was accepted under the procedure of self assessment and an order was passed on 25.07.2008.

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This has been referred to in the pre-revision notice dated 23.03.2015. Therefore, if the respondent seeks to re-open the assessment, statute provides for a limitation and the period of limitation is six years which comes to an end on 25.07.2014 after which the assessment could not have been re-opened. It is not in dispute that the pre-revision notice was received well beyond the period of limitation. The petitioner pointed out this aspect in their reply dated 15.04.2015 to the notice dated 23.03.2015. Further in the impugned order, the respondent seeks to refer to Proviso to Section 22(2) of the TNVAT Act and states that the time limit for passing orders expires only on 30.06.2018. In the written instructions given to the learned Government Advocate, the respondent states that the date on which the summon was received by the petitioner should be reckoned as the date from which the proceedings have commenced i.e. 10.04.2013.

3.In the considered view of this Court, this submission of the respondent is wholly flawed for the following two reasons:

1) Firstly, the receipt of the summon in April 2013 even assuming to be the starting point for proposing to re-open, any re-opening can only be done before the expiry of the limitation period. Thus, after issuance of summon in 2013 if revision notice was issued prior to 25.07.2014 the respondent may have a case. But however in the instant case though summon was said to have served, no pre-revision notice proposing to re-open the assessment was served prior to 25.07.2014. Therefore the impugned re-opening proceedings resulting in the impugned assessment order is barred by limitation.
2) The second aspect is as to whether the Proviso to Section 22(2) of the TNVAT Act applies to the facts and circumstances of this case. The Proviso would stand attracted only in cases where deemed assessment orders are not passed. In the instance case, the respondent himself while issuing the pre-revision notice dated 23.03.2015 has accepted the fact that a self assessment order has been passed by the respondent on 25.07.2008. therefore, Proviso to Section 22(2) of the TNVAT Act does not stand attracted to the instant case.

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4.For the above reasons, the impugned order is held to be unsustainable in law. Accordingly, the writ petition is allowed and the impugned order is set aside. No costs. Consequently, connected miscellaneous petition is closed.

cse

Sd/-
Assistant Registrar (CS VI)

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Sub-Assistant Registrar

To

The Assistant Commissioner (CT),
Vaniyambadi Assessment Circle,
Vaniyambadi, Vellore District.

+1CC to Spl.Govt.Pleader SR.NO.65975
+1CC to MR.S.RAMANATHAN Advocate SR.NO.65942

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