THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION NO.17404 OF 2016

ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

The proceedings under challenge in this Writ Petition is the assessment order, passed in Form VAT 305 dated 29.03.2016, levying tax of Rs.2,35,364/- on the petitioner for the financial years 2008-09, 2010-11, 2011-12 and 2013-14. The petitioner questions the said order on the ground that the assessment is barred by limitation in terms of Section 21(4) of the Andhra Pradesh Value Added Tax Act ("the Act" for brevity).

As the show cause notice dated 18.08.2014 in Form VAT 305-A makes no reference to the assessing authority having invoked the extended period of limitation under Section 21(5) of the Act, Smt. K.Uma, learned counsel for the petitioner would submit that, in the light of the law declared by a Division Bench of this Court in **K.G.F. Cottons (P) Ltd. V. Assistant Commissioner (CT) LTU**[1] and in the absence of the jurisdictional facts, forming the basis for invoking the extended period of limitation under Section 21(5) of the Act, being stated in the show cause notice, the impugned assessment order is barred by limitation.

Sri Shaik Jeelani Basha, learned Special Standing Counsel for Commercial Taxes, would submit that the assessment, for the financial years 2011-12 and 2013-14, were dropped by the assessing authority himself; the petitioner was assessed to tax only for the years 2008-09 and 2010-11; while the assessment for the years 2008-09 is barred by limitation even applying the extended period of limitation under Section 21(5) of the Act, assessment for the year 2010-11 would be within time; the petitioner has not raised the plea of limitation in his reply to the show cause notice; and, consequently, no interference is called for.

Section 21(4) of the Act enables the prescribed authority, based on any information available, to conduct a detailed scrutiny of the accounts of the VAT dealer and, where any assessment as a result of such scrutiny becomes necessary, such assessment shall be made within a period of four years from the end of the period for which the assessment is to be made. Section 21(5) of the Act stipulates that, where any wilful evasion of tax has been committed by a dealer, an assessment shall be made to the best of his judgment by the authority prescribed within a period of six years from the date of filing of the return. As Section 2(36) of the Act defines "tax period" as a calendar month or any other period as maybe prescribed (i.e., prescribed by way of rules), and as no rules have been prescribed in this regard, the tax period continues to be a period of one month and, consequently, the period of four years, stipulated under Section 21(4) of the Act for passing an assessment order, must be computed from the end of the tax period of one month. If Section 21(4) of the Act were to apply then the assessment made, for both the financial years 2008-09 and 2010-11, would be barred by limitation as the impugned assessment order was passed only on 29.03.2016.

The contention urged on behalf of the respondents is, however, that the extended period of limitation under Section 21(5) of the Act is attracted and consequently, while the assessment for the financial year 2008-09 may be barred by limitation, the assessment for the financial year 2010-11 is not. It is not in dispute that, in the pre-assessment show cause notice issued to the petitioner on 18.08.2014, no reference is made by the assessing authority either to the ingredients of Section 21(5) of the Act or that he was invoking jurisdiction under Section 21(5) of the Act. A Division Bench of this Court, in **K.G.F. Cottons (P) Ltd.**[1], observed:-

"…This issue can be examined from another angle. The fact or facts upon which the jurisdiction of an authority depends is a "jurisdictional fact' the existence of which is the sine qua non, or the condition precedent, to the assumption of jurisdiction by the authority. Once such a jurisdictional fact is found to exist, the authority has the power to decide adjudicatory facts or facts in issue. (*Carona Ltd. v. Parvathy Swaminathan & Sons* (2007) 8 SCC 559*, Halsbury's Laws of England (Fourth Edition), Volume 1, para 55, page 61; Reissue, Volume 1(1), para 68, pages 114-15,Chaube Jagdish Prasad v. Ganga Prasad Chaturvedi* IR 1959 SC 492 and *Arun Kumar v. Union of India* [2006] 286 ITR 89 (SC); [2007] 1 SCC 732). **The prescribed authority gets jurisdiction to assess the VAT dealer to tax, within the extended period of limitation of six years under Section 21(5) of the Act, only if the said dealer has committed wilful evasion of tax. As the fact, of commission of wilful evasion, is a jurisdictional fact, the dealer is entitled to satisfy the prescribed authority, on being given the opportunity to show case, that such jurisdictional facts are non-existent; and jurisdiction under Section21(5) of the Act cannot be exercised. It is necessary, therefore, for the prescribed authority to detail these jurisdictional facts in the show cause notice proposing to assess the dealer to tax under Section 21(5) of the Act. The contents of the show cause notice and the assessment order must clearly show the commission of wilful evasion, in the absence of which the extended period of limitation, under Section 21(5) of the VAT Act, would not apply. The requirement of stating these jurisdictional facts in the show cause notice is to ensure that the assessee dealer has the opportunity to satisfy the assessing authority that he lacks jurisdiction, to assess the dealer to tax, applying the extended period of limitation……" (emphasis supplied)**

In the present case, as the show cause notice does not allege the commission of wilful evasion, and as these jurisdictional facts have not been stated therein, it is not open to the assessing authority, for the first time in the assessment order, to hold that the assessment is within the extended period of limitation under Section 21(5) of the Act. Failure of the petitioner to raise the question of limitation, in the reply filed by him to the show cause notice, is of no consequence as this question, whether the assessment is barred by limitation, relates to the jurisdiction of the assessing authority to pass an assessment order beyond the period of limitation prescribed under the Act. We see no reason, therefore, to refrain from examining this question urged before us in the present writ proceedings.

The impugned assessment order, for the tax periods 2008-09 and 2010-11, is set aside as barred by limitation under Section 21(4) of the Act. As the assessing authority has himself dropped assessment, for the years 2011-12 and 2013-14, the assessment order is quashed in its entirety. Before parting with the case we must, however, record our concern at the casual manner in which assessment proceedings are dealt with by the assessing authorities concerned. In the present case, while the show cause notice was issued on 18.08.2014, the assessment order was passed more than a year and a half thereafter on 29.03.2016. If the assessment order had been passed immediately after the show cause notice was issued, at least a part of the assessment period during the financial year 2010-11 would have been within limitation. We, however, see no reason to dwell on this aspect any further as the third respondent, in his counter-affidavit dated 08.07.2016, has assured that the reason for the delay of 18 months would be ascertained, and appropriate action would taken against those responsible for the delay.

The Writ Petition is, accordingly, disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, J)

(U.DURGA PRASAD RAO, J)

19th July 2016
RRB

[1] **(2015) 81 VST 1**