IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 298 OF 2017

1. The State of Goa,
   through the Chief Secretary,
   Government of Goa, having office
   at Secretariat, Porvorim,
   Bardez, Goa.

2. The Secretary (Finance)
   Government of Goa, having office
   at Secretariat Porvorim,
   Bardez, Goa.

3. The Commissioner of Commercial Taxes,
   Government of Goa, having office at
   Panaji-Goa. …. Petitioners

V e r s u s

Navelkar Enterprises,
“Ganesh Prasad”
Dr. Atmaram Borkar Road,
Panaji-Goa. ….. Respondent

Shri A. Talaulikar, Additional Government Advocate for the Petitioners.

Shri V. R. Tamba with Shri P. Sawant, Advocates for the Respondent.

CORAM: C. V. BHADANG, J.
DATE: 25 July, 2017.

ORAL ORDER:

Heard Shri Talaulikar, the learned Additional Government Advocate for the petitioners and Shri V. R.Tamba, the learned counsel for the respondent.

2. The challenge in this petition is to the judgment and order dated 28/11/2014 passed by the learned Administrative Tribunal, Panaji-Goa in Value Added Tax Appeal No.01/2010. By the impugned judgment, the learned Administrative Tribunal has allowed the appeal thereby setting aside the order dated 15/10/2009 passed by the learned Assistant Commissioner of Commercial Taxes-III, Panaji, to the extent it holds the subject assessment to be within limitation.

3. The brief facts are that; the Assistant Commissioner of Commercial Taxes had assessed the respondent for the assessment year 2005-2006. Indisputably, the notice of assessment was given on 7/5/2008. Indisputably the statutory period of assessment was two years after the close of the assessment year. Thus in the present case, the statutory period of assessment expired on 30/4/2008 and the notice of assessment was given on 7/5/2008. It is undisputed that initially the period of limitation for assessment was three years, which was brought down to two years by the Goa Value Added Tax Act (second amendment) Act 2006. Thus the date on which the impugned assessment was sought to be made, the period was two years.

4. It was contended on behalf of the respondent that the assessment is

beyond the period of limitation. On behalf of the petitioners reliance is sought to be placed on the Notification dated 23/9/2008 whereunder the Commissioner acting under the third proviso to sub- section (3) of section 29 of the Act had sought to extend the period of assessment for the financial year 2005-2006 by one year effective from 1.4.2008. The relevant notification reads as under :

Notification No.CCT/12-1-/08-09/04 dtd. 23.9.2008

> "In exercise of the powers conferred by the third provisio to sub section (3) of section 29 of Goa Value Added Tax Act, 2005 (Act 9 of 2005) (hereinafter referred to as the "said Act") I, Shri Vallabh K. Kamat, Commissioner of Commercial Taxes, Government of Goa, hereby extend the period of assessment for the financial year 2005-06 by one year effective from 1st April, 2008. All assessments for the year 2005-06 shall be accordingly be completed on or before 31st March, 2009."

4. Thus the Assistant Commissioner by an order dated 15/10/2009 held that the assessment was within limitation. Feeling aggrieved the respondent challenged the same before the learned Administrative Tribunal. The learned Administrative Tribunal after taking a note of the fact that the statutory period of assessment for the year 2005-2006 expired on 30/4/2008 and further taking note of the fact that the notice of assessment itself was given on 7/5/2008 i.e. after expiry of statutory period of two years, held that the assessment was beyond the period of limitation. The Tribunal has inter alia placed reliance on the decision of this Court in the case of **Sahyadri**

Sahakari Sakhar Karkhana Ltd. Vs. State of Maharashtra and others reported in (2013) 58 VST 323.

5. On hearing the learned counsel for the parties and on perusal of the record it appears that as per the settled position the extension which is contemplated under the third proviso to sub-section (3) to section 29 of the Act has to be within the period of limitation. The learned Additional Government Advocate in all fairness does not dispute this legal position. In the present case the extension is admittedly beyond the period of limitation. In that view of the matter, no exception can be taken to the finding as recorded by the learned Administrative Tribunal. I have carefully gone through the impugned order and I find that it does not suffer from any infirmity so as to require interference. The petition is without any merit and is accordingly dismissed.

C. V. BHADANG, J.

Ap/