IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.21251 of 2017
and
W.M.P.No.22156 of 2017

Artistic Art Forum Pvt.Ltd.,
rep.by its Director,
Mr.B.Umesh,
"Ankur Plaza",
Shop No.5, Basement,
No.113, G.N.Chetty Road,
T.Nagar, Chennai-600 017. .. Petitioner

Vs

The Commercial Tax Officer,
Pondy Bazaar Assessment Circle,
No.46, Greenways Road,
Chennai-600 028. .. Respondent

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the impugned proceedings of the respondent passed in TIN/33361522842/2007-08 dated 31.05.2017 and quash the same as the impugned proceedings of the respondent is barred by limitation under Sec. 27 of the TNVAT Act, 2006 in assessing the turnover of Rs.8,52,83,421/-.

For Petitioner : Mr.N.Murali

For Respondent : Mr.K.Venkatesh,
Government Advocate

ORDER

Heard Mr.N.Murali, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate, accepting notice on behalf of the respondent.

2.With the consent of the learned counsel on either side, the main writ petition itself is taken up for final disposal.

3.The petitioner, who is a registered dealer on the file of the respondent, under the provisions of the Tamil Nadu Value Added Tax Act, 2006 ("TNVAT Act" in short), has challenged the impugned assessment order which is a second revisional order passed under Section 27 of the TNVAT Act, dated 31.05.2017, on the only ground that the entire proceedings is hopelessly barred by limitation.

4.To demonstrate as to how the impugned proceedings is barred by limitation, the learned counsel for the petitioner invited the attention of this Court to certain dates and events, from which it is seen that the petitioner was deemed to have been assessed under Section 22 of the TNVAT Act for the assessment year 2007-2008 on 08.01.2010. The respondent issued a notice under Section 27 of the TNVAT Act on 25.01.2010 proposing to revise the assessment. This notice was well within the period of six years, pursuant to which a revised order had been passed on 23.09.2010 which was also within the period of six years. Subsequently, the second revisional notice was issued on 21.04.2017. The petitioner would contend that this notice is barred by limitation on the ground that it has been issued beyond the period of six years from 08.01.2010 when the petitioner was deemed to be assessed under Section 22 of the TNVAT Act, and also barred by limitation if the date of the first revisional order is reckoned on 23.09.2010. Therefore, the learned counsel for the petitioner would contend that the impugned proceedings is liable to be set aside.

5.The learned counsel for the petitioner further submitted that in the light of the clarification issued by the Commissioner of Commercial Taxes dated 20.04.2001, a Best Judgment Assessment cannot be replaced by another Best Judgment Assessment, which is precisely what has been done by the respondent in the impugned proceedings.

6.However, unfortunately, when the petitioner submitted their objections to the revision notice on 10.05.2017, they have failed to raise the question of limitation as one of the contentions in the objections. Therefore, the respondent cannot be found fault for having decided the matter on merits and rendered a finding. Therefore, the petitioner has to be blamed for the mistake committed by them. However, considering the fact that the plea of limitation is a technical plea and a legal plea and it could be raised at any stage of the proceedings and this Court also is entitled to look into the said plea, this Court is of the opinion that the petitioner should not be shut out without any remedy with regard to such plea, as the plea of limitation if found to be correct, will go to the root of the matter.

7.However, for the above reasons, this Court is not inclined to set aside the impugned order of assessment, as the petitioner had failed to raise the plea of limitation in their objections dated 10.05.2017, but however, giving liberty to the petitioner to file a petition under Section 84 of the TNVAT Act by raising such a plea and if such a petition is filed, the respondent shall consider the petition and whether the plea be a technical or legal plea, the respondent shall examine the same on merits and in accordance with law and pass a speaking order after affording an opportunity of personal hearing to the petitioner. The petitioner shall file such a petition within a period of one week from the date of receipt of a copy of this order and the respondent shall decide the same within a period of two weeks from the date on which the petition is received by the respondent. Till orders are passed in the petition filed under Section 84 of the TNVAT Act, no coercive action shall be initiated against the petitioner for recovery of the tax and penalty quantified in the impugned order.

8.The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KM

To

The Commercial Tax Officer,
Pondy Bazaar Assessment Circle,
No.46, Greenways Road,
Chennai-600 028.

+ 1 cc to Mr.N.Murali, Advocate Sr,58083
+ 1 cc to Government Pleader Sr.57519

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KSK(CO)
EU 30.08.17