IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.9659 to 9661 of 2006
&
W.M.P.Nos.10751 to 10753 of 2006

M/s.The Peria Karamalai Tea
& Produce Co., Ltd.,
Rep. by its Executive Director
Prakash Parasher
No.234-A, Race Course Road
Coimbatore ... Petitioner in all WPs

Vs

1. The Commercial Tax Officer (FAC)
Trichy Road Circle
Coimbatore

2. The State of Tamil Nadu
Rep. by the Secretary to Government
Department of Commercial Taxes &
Religious Endowments
Fort St. George
Chennai - 600 009 ... Respondents in all WPs

Prayer:- Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari calling for the records on the file of the first respondent in his proceedings in CST No.299513/1998-1999, 299513/1999-2000, and 1880060/1999-2000, dated 23.01.2006 and quash the same.

For Petitioner in all Wps : Ms.R.Hemalatha

For Respondent in all WPs : Mr.Kanmani Annamalai
Additional Government Pleader

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C O M M O N  O R D E R

Heard Ms.R.Hemalatha, learned counsel for the petitioner and Mr.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents.

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2.The petitioner has impugned the revision notice issued by the respondent for the Assessment years 1998-99 under the provisions of Central Sales Tax Act and Assessment years 1999-2000 under the provisions of Tamil Nadu General Sales Act and Central Sales Act.

3.The reason for approaching this Court by way of challenge to revision notices is on the ground that the notices are barred by limitation. The Assessment Order in respect of the relevant assessment years were passed on 30.03.2001. Thus, as per the provisions of the Act as it stood prior to 01.07.2002, the period of limitation for reopening / revising the assessments is 5 years from the date of assessment. If the same is applied, then the period of limitation would come to an end on 31.03.2004 for the assessment years 1998-99 and 31.03.2005 for the Assessment years 1999-2000. The respondent has issued the impugned notices taking advantage of the amendment which was made to Section 16(1)(a) of the Tamil Nadu General Sales Tax Act, which provides that the assessments can be reopened within a period of 5 years from the date on which the order of original assessment was made. Therefore, the respondent would contend that the period of limitation should be reckoned from 30.03.2001 when the orders of assessment were passed. Thus, the issue is whether the impugned notices are barred by limitation or not.

4. This issue has to be answered in favour of the petitioner in the light of the decision of the Division Bench in M/s.Stanes Amalgamated Estates Limited Vs. The Commercial Tax Officer, Trichy Road Circle, Coimbatore, in W.P.No.3175 of 2006 dated 27.08.2013. In the said case, an identical issue arose for consideration in respect of an another dealer in Tea. The Assessment Year in the said case was 1999-2000 and the order of assessment was passed on 30.03.2001. The revision notice in the said case under Central Sales Tax Act was issued on 23.01.2006 proposing to revise the assessment under Section 16 of the Tamil Nadu General Sales Tax Act. The dealer challenged the pre-revision notice contending that the revision of assessment under Section 16(1)(a) of the TNGST Act is clearly barred by limitation since the revision notice was issued on 23.01.2006, which is after the expiry of five years. In the said decision, the Division Bench, after taking note of Section 16(1)(a) of the Act and the amendments thereof, held that since assessment order was passed on 30.03.2001 much prior to the amended provision came into effect, the limitation of five years cannot be calculated from the date of final order of assessment based on the amended provision - Section 16(1)(a). The Division Bench also took note of the decision of the Division Bench in the case of M/s.M.V.A.Arumugaperumal and Sons Vs. The Additional Commercial Tax Officer, (FAC), Srivilliputtur (2008-09 (14) TNCTJ 115) and the judgment in W.A (MD) No.136 of 2008 dated

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19.06.2012. As noticed above, the assessment orders in the instant cases were passed on 30.03.2001 prior to the amendment to Section 16 of the Act. Therefore, the impugned notices are barred by limitation.

Accordingly, the writ petitions are allowed and the impugned notices dated 23.01.2006 are quashed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gpa

To

1. The Commercial Tax Officer (FAC)
   Trichy Road Circle
   Coimbatore

2. The Secretary to Government
   Department of Commercial Taxes &
   Religious Endowments
   Fort St. George
   Chennai - 600 009

+1cc to M/s.R.Hemalatha, Advocate, S.R.No.60044
+1cc to the Special Government Pleader(T), S.R.Nos.60180 & 60179

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&
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RR(CO)
CA(13/10/2017)

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