IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.10.2017

CORAM

The Hon'ble Mr.Justice T.S.Sivagnanam

W.P.No.48654 of 2006

L.G.Balakrishnan & Bros Ltd., ... Petitioner

Vs.

The Assistant Commissioner (CT)
Fast Track Assessment Circle-I
Coimbatore 641 018 ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, call for the records of the case from the file of the Respondent in TNGST 225526/1988-89/AG Para 17/IIA (15-151/1986-87) dated 03.11.2006 and to quash the same.

For Petitioner : Mrs.Lakshmi Sriram

For Respondent : Mr.S.Kanmani Annamalai
Addl. Government Pleader

O R D E R

Heard Mrs.Lakshmi Sriram, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, accepting notice on behalf of the respondent.

2. The petitioner has challenged the Assessment Order dated 03.11.2006, reopening of the assessment on the ground that the respondent has collected excess tax than what is permissible to be collected. The assessment is for the year 1988 and 1989, under the provisions of TNGST Act.

3.The petitioner has challenged the impugned assessment proceedings as being time barred. This submission is made based on Section 22 (2) of the TNGST Act. At the relevant point of time the first proviso under sub-section 2 of Section 22 states that no proceedings for reopening under sub-Section 2 shall be commenced after a period of five years from the date of expiry of the year in which the amount has been collected. This provision was amended by 5 of the Amendment Act 17/ 2004 dated 05.08.2004 whereunder the words "expiry of the year which the amount has been collected" was substituted with the words "from the date of order of the final assessment by the Assessing Authority".

4. In the instant case, the final assessment was made on 31.05.1995 for the Assessment year 1988-89. In terms of the decision of the Hon'ble Division Bench in the case of M.U.A.Armugaperumal and Sons Vs. Additional Commercial Tax Officer (FAC), Srivilliputtur, (2008) 16 VST 188 (Mad), such amendment can have only prospective effect, while considering the amendment to Section 16 (1) (a) of the TNGST Act. The ratio of said decision would apply to the case on hand.

5.The respondent in the written instructions given to the learned Additional Government Pleader, would justify his action by referring to the dates of assessment order dated 31.05.1995 and would state that the notice levying penalty was issued on 03.09.1997 and it is not barred by limitation. Unfortunately, the respondents have referred to amended provisions under Section 22 (2) proviso which came into effect only on 05.04.2004, which states that the period has to be reckoned from the date of the order of the final assessment by the Assessing Authority. Prior to the amendment, the date would be before five years of the expiry of the year in which the amount has been collected.

6. Therefore, the amended provisions which came into effect on 05.08.2004 cannot be pressed into service by the respondent to sustain the impugned proceedings. Further in the notice dated 22.08.2006, the respondent stated that the excess tax constitutes unjust enrichment. However, the principle of unjust enrichment is not applicable to the provisions of TNGST Act.

7. Thus, for the above reasons, for all purposes the limitation will commence to run from 31.03.1989 and the impugned proceedings have been initiated beyond the 5 years period stipulated under Section 22 (2) Proviso of TNGST Act and are clearly barred by limitation.

8.Accordingly, the writ petition is allowed. No costs.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

The Assistant Commissioner (CT)
Fast Track Assessment Circle-I
Coimbatore 641 018

+1 CC to Spl. Govt. Pleader sr 74139.

W.P.No.48654 of 2006

SR(CO)
SP(30/11/2017)