In the High Court of Judicature at Madras

Dated : 28.4.2017

Coram :

The Honourable Mr.Justice S.M.SUBRAMANIAM

WP No.15545 of 2004 and WPMP.No.18446 of 2004

M/s.Sovereign Houseware
Impex, Chennai-51 ...Petitioner

Vs

The Commercial Tax Officer,
Manali Assessment Circle,
Chennai-108. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent in TNGST-1081928/1998-99 dated 21.5.2004 and quash the proceedings dated 21.5.2004.

For Petitioner : Ms.C.Rekha Kumari
For Respondent : Mr.S.Kanmani Annamalai, AGP

ORDER

The challenge in this writ petition is to a pre-revision notice dated 21.5.2004 issued by the respondent herein on the ground that as per Section 16(1)(a) of the Tamil Nadu General Sales Tax Act, 1959, a re-assessment has to be effected within five years.

2. Section 16(1)(a) of the said Act reads as under :

"Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the Assessing Authority may, subject to the provisions of Sub-Section (2), at any time, within a period of five years from the expiry of the year, to which, the tax relates, determine to the best of its judgment the turnover, which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such assessment. "

3. In this writ petition, the assessment in question is of the year 1998-99. The last date for issuing such a pre-revision notice was 31.3.2004, since the assessment was relating to the period 1998-99. Admittedly, the pre-revision notice was issued by the respondent vide proceedings dated 21.5.2004, after the expiry of five years of period prescribed under the said Act.

4. In support of the above proposition, the learned counsel for the petitioner cited the judgment of the Honourable Division Bench of this Court rendered in the case of Universal Abrasives Vs. CTO [reported in 2014 (68) VST 386] wherein speaking for the Bench, R.Banumathi,J (as she then was), considered the very same provisions and laid down the principles as under :

> "By reading of the provision, it is clear that the limitation period commences from the date of final assessment order. The said provision came into effect prospectively and not retrospectively. There is nothing in the amended provision Section 16(1)(a) that the same was intended to operate retrospectively. Therefore, the respondent cannot resort to the amended provision Section 16(1)(a) to sustain the impugned revised proceedings of assessment.
>
> As pointed out by the learned counsel for the appellant, the original order of assessment for the year 1997-98 was issued in proceedings CST. 50386/97-98 dated March 11, 2000. Even though the assessment order dated March 11, 2000 has not been filed in the typed set of papers, in the revised proceedings dated July 2, 2002, the said proceedings dated March 11, 2000 has been shown as Ref.No.1. Hence, the said assessment order dated March 11, 2000 is the original assessment order. The proceedings dated July 2, 2002 is only a revised proceedings of the Commercial Tax Officer considering the representation of the petitioner regarding the disallowance of the exemption on export sales and disallowance of claim of assessment at 4% against the C Forms. As rightly contended by the learned counsel for the appellant, the proceedings dated July 2, 2002 is only a revised proceedings and not a original order of assessment, since the original order of assessment for the assessment year 1997-98 is dated March 11, 2000. As per the unamended provision of Section 16(1)(a) of the CST Act, any revision of assessment of the escaped turnover ought

> to have been made within a period of five years from the expiry of the year to which tax relates. Since the assessment year is 1997-98, in the case on hand, any revision of proceedings ought to have been issued on or before March 30, 2003. But, the impugned revision notice was issued on April 5, 2004 and the impugned revised order for the year 1997-98 was issued on August 23, 2004, which is beyond the period of five years stipulated in Section 16(1)."

5. The very same Honourable Division Bench considered the same principle in the case of P.R.G.Kamaraj Vs. DCTO, Thiruthuraipoondi Assessment Circle [reported in 2014 (74) VST 368], in which, the relevant portion reads as follows :

> "In the case on hand, since the assessment order was passed on December 28, 2001, much prior to the amended provision came into effect i.e. July 1, 2002, the limitation of five years cannot be calculated from the date of the final order of assessment based on the amended provision Section 16(1)(a). The assessment year in question is 1999-2000. Hence, the five year limitation ends by March 31, 2005 and the pre-revision notice issued beyond the period of five years is barred by limitation."

6. The learned Additional Government Pleader appearing for the respondent has not disputed the provisions as well as the principles laid down by the Honourable Division Bench of this Court and accordingly, the principles laid down by the Honourable Division Bench of this Court squarely appling to the case on hand, since the facts are almost similar. Therefore, the writ petition deserves to be allowed.

7. In the result, the writ petition is allowed and the impugned order dated 21.5.2014 is quashed. No costs. Consequently, the above WPMP is closed.

-s/d-
Assistant Registrar(CSIII)

True Copy

Sub-Assistant Registrar

To
The Commercial Tax Officer, Manali Assessment Circle,
Chennai - 108.

+1 cc to Special Government Pleader(T) sr 26355
+1 cc to Mr.C.Rekha Kumari Advocate sr 36397

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