IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2018

CORAM:

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.9908 of 2018
W.M.P.No.11839 of 2018

Tvl.Sri Bagyalakshmi Auto Parts,
Rep. by its Proprietor,
N.Muthusamy,
No.2/29-D1 Salem Main Road,
Mavelipalayam Post,
Salem District. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Sankari Assessment Circle,
Sankari. ...Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records on the files of the respondent in TIN:33133223233/2006-07 dated 28.02.2018 and quash the same as being contrary to the principles of natural justice, without jurisdiction and authority of law and beyond the prescribed period of limitation of five years.

For Petitioner : Mr.R.Senniappan

For Respondent : Ms.G.Dhana Madhri,
Government Advocate

O R D E R

Heard Mr.R.Senniappan, learned counsel for the petitioner and Ms.Dhana Madhri, learned Government Advocate for the respondent.

2. With the consent on either side, the writ petition is taken up for disposal.

3. I have perused the material documents placed in the typed set of papers as well as the para wise remarks furnished

by the respondent to the learned Special Government Pleader (Taxes) vide letter dated 01.06.2018.

4. The only question which has to be considered in the instant case is whether the impugned assessment order passed under the provisions of Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "TNVAT Act") dated 28.02.2018 for the assessment year 2006-2007 is barred by limitation.

5. It is not in dispute that the petitioner/dealer was assessed under Section 22(2) of the TNVAT Act vide order dated 15.04.2008. Thus, if the respondent proposed to revise the assessment by invoking the powers under the TNVAT Act, it should have been done within five years from the date of such order. Admittedly, the impugned re-opening was initiated only on 09.03.2016 when the respondent issued revision notice. If the said date is taken, then the impugned re-opening is barred by limitation. The respondent in the para wise remarks given to the learned Special Government Pleader would submit that since it is a computer generated order, the date of assessment order should be considered as 30.06.2012 as per the deeming provision of Section 22(2) of the TNVAT Act. This contention is wholly untenable since the respondent under the impugned assessment order has admitted that self assessment order passed under Section 22(2) is dated 15.04.2008. Even assuming for the sake of argument, the contention raised by the respondent is correct, the period of limitation should be taken as six years, still, it is barred by limitation. Thus, for the above reasons, the impugned order has to be held to be unsustainable solely on the ground of limitation and not on the merits of the assessment. For such reasons, the petitioner is entitled to succeed.

6. In the result, the writ petition is allowed and the impugned order is quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

svki

To

The Assistant Commissioner (ST),
Sankari Assessment Circle,
Sankari.

+1cc to Mr.R.Senniyappan, Advocate SR.No.36452
+1cc to Special Government Pleader(Taxes) SR.No.36328

W.P.No.9908 of 2018

GN(20/06/2018)