IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.01.2018

Coram

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

Writ Petition No.32201 of 2017
and
W.M.P.No.35384 of 2017

India Cycle Stores,
rep. by its Proprietor S.H. Yaseen Hussian ...Petitioner

Vs.

The Assistant Commissioner (CT),
Bazaar Assessment Circle,
Salem. ...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the respondent in TIN No.33762780130/2008-09, dated 23.05.2017, and to quash the order passed therein.

For Petitioner : Mr.A.P. Srinivas

For Respondent : Mr.M. Hari Haran
Additional Government Pleader

O R D E R

Heard Mr.A.P. Srinivas, the learned counsel appearing for the petitioner and Mr.M. Hari Haran, the learned Additional Government Pleader for the respondent.

2. 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) has filed this Writ Petition, challenging the assessment order, dated 23.05.2017, passed under the provisions of the TNVAT Act for the assessment year 2008-09.

3. The impugned assessment order is a revision of assessment, which was done, pursuant to the returns filed by the petitioner for the relevant assessment year.

4. The petitioner challenges the impugned assessment order on the ground that, it is barred by limitation and the

assessment cannot be re-done, as it is beyond the time limit of five years. Considering the said submission, the Court on 12.12.2017, granted an order of interim stay, by passing the following order:-

> " Heard Mr.A.P.Srinivas, learned counsel for the petitioner.
>
> 2. The petitioner has impugned the order of assessment passed by the respondent dated 23.05.2017 for the assessment year 2008-2009 under the provisions of the TNVAT Act.
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> 3. It is submitted by the learned counsel for the petitioner that the impugned re-assessment is time barred in terms of Section 27(1) of the TNVAT Act as the original assessment order was passed on 10.06.2011 and the time limit of five years expires on 09.06.2016. However, the amendment brought under Act 23/2012 amending Section 27 of the TNVAT Act with effect from 19.06.2012 has held to be prospective. Therefore, the six years limitation period cannot be made applicable to the petitioner's case. In this regard, the learned counsel placed reliance on the decision in the case of Universal Abrasives V. Commercial Tax Officer, Manali Assessment Circle, Chennai reported in (2014) 68 VST 386 (Mad).
>
> 4. In the light of the above, there shall be an order of interim stay. Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondent and seeks time to get instructions.
>
> 5. List the matter on 23.01.2018."

5. The learned Additional Government Pleader for the respondent, on instructions, is unable to get over the legal bar contained under Section 27 (1) of the TNVAT Act.

6. As noticed above, the original assessment order was passed on 10.06.2011, and the time limit of five years expires on 09.06.2016. Therefore, the assessment for the relevant year could not have been reopened and redone. The respondent cannot place reliance on the amendment to Section 27 of the

TNVAT Act, which was brought about by Act 23 of 2012, with effect from 19.06.2012, and therefore, such amendment can be only on prospective. Hence, the respondent cannot state that the period of limitation is six years. This very issue was decided by the Court, in the case of Universal Abrasives Vs. Commercial Tax Officer, Manali Assessment Circle, Chennai, reported in [(2014) 68 VST 386 (Mad)], which decision has attained finality, and accepted by the Department. Thus, on facts, the revision of assessment order is without jurisdiction, as it is barred by limitation.

7. Thus, for the above reasons, this Writ Petition is allowed and the impugned order is set aside. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT),
Bazaar Assessment Circle,
Salem.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.5065
+1cc to the Government Pleader, S.R.No.5781

Writ Petition No.32201 of 2017

BR(CO)
RRK(09/02/2018)