

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.4270 of 2013

and

MP.No.1 of 2013

M/s.Bannari Amman Spinning Mills Limited
Rep. by its Director,
252, Mettupalayam Road,
Coimbatore-641 043. ... Petitioner

Vs

The Assistant Commissioner (CT)
Mettupalayam Road Circle,
Coimbatore-18. ... Respondent

PRAYER : Writ Petition filed under Article 226 of the
Constitution of India to issue of Writ of Certiorari to call for
the records of the respondent in CST No.640173/2008-2009 and
quash the order dated 12.11.2012 passed therein.

For Petitioner : M/s.R.H.Ramani, Senior Counsel
for M/s.B.Raveendran

For Respondent : Mr.V.Hari Babu
Special Government Pleader (Taxes)

O R D E R

The order dated 12.11.2012 issued by the respondent in
CST.No.640173/2008-2009 is under challenge in this writ petition.

2.The learned Senior Counsel appearing on behalf of the writ
petitioner made a submission that the original assessment made
by the respondent is in complete violation of the provisions of
the Tamil Nadu Value Added Tax Act, 2006(hereinafter referred to
as "TNVAT ACT"). As per Section 9(2-A) of the CST Act, 1956 read
with proviso to Section 22(2) of the "TNVAT ACT", a dealer shall
be deemed to have been assessed to tax as per his returns if
assessment order are not passed on the returns submitted for the

assessment years 2006-07, 2007-08, 2008-09, 2009-10 and 2010-11 on or before 30.06.2012 and therefore, the writ petitioner is deemed to have been assessed for the assessment years 2008-09. In violation of the said provision, now the respondent has passed the impugned original assessment order on 12.11.2012, which is erroneous and in violation of the statutory provisions. Thus, the order impugned is liable to be scrapped.

3. Section 22(2) of the "TNVAT ACT" reads as follows:

"(2) The assessing authority shall accept the returns submitted for the year, by the dealer, if the returns are in the prescribed form and accompanied with the prescribed documents and proof of payment of tax. Every such dealer shall be deemed to have been assessed for the year on the 31st day of October of the succeeding year:

Provided that in respect of such returns submitted for the years 2006-2007, 2007-2008, 2008-2009, 2009-2010 and 2010-2011, on which assessment orders are not passed shall be deemed to have been assessed on the 30th day of June 2012."

4. The proviso clause specifies that in respect of such returns submitted for the years 2006-07, 2007-08, 2008-09, 2009-10 and 2010-11, on which assessment orders are not passed shall be deemed to have been assessed on the 30th day of June 2012.

5. In the present writ petition on hand the assessment years in question are 2008-2009, 2009-2010. Thus, the deemed clause would be applicable in the case of the writ petitioner. As per the above provision cited supra the impugned order now passed in the proceedings dated 12.11.2012 cannot be enforced at all. The learned Senior counsel relied on the Judgment delivered by this Court in W.P.Nos.4080 & 4081 of 2018 dated 07.06.2018. The similar issue has been discussed and this Court has come to the conclusion that the statutory time limit prescribed cannot be extended by the respondent. However, it is made clear that in the event of identifying any inconsistencies or discrepancies in the returns, then the action shall be taken by exercising the powers conferred under Section 27 of the "TNVAT Act".

6. The learned counsel appearing on behalf of the respondent relying on the common counter affidavit filed by the respondent, has stated that Section 22(2) existed before 19.06.2012 and the said Section contains some conditions. Filing of returns accompanied that the related documents prescribed in the Act (VAT CST) is one amongst such conditions. However, those enclosures

were not filed by the petitioners and in this regard, the respondent has not sent notices to the writ petitioners and therefore, the principles of natural justice has been complied with. In other words, the opportunity was provided to the writ petitioner to correct the inconsistencies in a sales figures and to submit returns in a prescribed format.

7. Considering the submissions made on behalf of the respective parties to the present lis, this Court is of an opinion that there is no total prohibition for reopening of the assessment, if any discrepancies are found by the competent authorities during scrutiny. Thus, this Court is of an opinion that the judgment earlier delivered in this regard is to be followed in all aspects. The relevant paragraphs No.6, 7, and 8 of the Judgement is extracted here under:

"6. what is to be noted is that on and after 30.06.2012, the petitioner is deemed to have been assessed for the relevant year, viz., 2007-08. Therefore, the question of passing a separate assessment order does not arise. However, it was well open to the assessing officer to pass such an order before the cut-off dated 30.06.2012 and not thereafter. If the respondent is of the view that the rate of tax as mentioned in the return and the amount of tax paid is incorrect or for certain other reasons, the returns cannot be processed, then the only remedy is to reopen the assessment and, the impugned proceedings cannot be given effect to.

7. So far as the assessment year 2008-09 is concerned, the mistake committed by the respondent is to issue a notice for provisional assessment. This could not have been done by the respondent, in the light of the above reasons.

8. In the result, these writ petitions are disposed of giving liberty to the respondent to initiate reopening proceedings, if she deems fit and appropriate to do so and the respondent is directed not to enforce the order dated 01.02.2018 and the notice dated 01.02.2018 for the assessment years 2007-08 and 2008-09 respectively. No costs. Consequently, connected miscellaneous petitions are closed."

8. In view of the judgment cited supra, this Court is of an opinion that the present writ petition also deserves to be considered. Accordingly, the writ petition stands disposed of, by giving liberty to the respondents to initiate reopening of the proceedings, if the authority competent deems fit and appropriate to do so and the respondent is directed not to enforce the impugned order dated 12.11.2012, for the assessment years 2008-2009, 2009-2010 respectively. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

stm/nmm

To

The Assistant Commissioner (CT)
Mettupalayam Road Circle,
Coimbatore-18.

+1cc to the Special Government Pleader Sr.46644

W.P.No.4270 of 2013

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