IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.09.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.13613 of 2018
and
W.M.P.No. 16037 of 2018

Eveready Industries India Limited
Represented by its Regional Commercial Manager,
Prakash Bhagat,
A5. 35/8, ARK Colony,
Eldams Road, Chennai - 600 018 ... Petitioner

vs.

The Assistant Commissioner (ST)
Anna Salai Assessment Circle,
No.1 PAPJM, Building Annex, 4th Floor,
Greams Road
Chennai - 600 006.
... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records on the files of the respondent herein in TIN:33310640024/2007-08 dated 09.05.2018 and quash the same.

For Petitioner : Mr.N.Inbarajan

For Respondent : Mrs.G.Dhana Madhri
Government Advocate

O R D E R

The petitioner is aggrieved against the order dated 09.05.2018, issued by the respondent in revising the assessment made in respect of assessment year 2007-08, under the Tamil Nadu Value Added Tax Act, 2006.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent.

3. The petitioner is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006, on the file of respondent. In respect of the assessment year 2007-08, the petitioner filed returns under the TNVAT Act, 2006 and the respondent issued proceedings dated 06.09.2010 on self-assessment basis in accordance with Section 22(2) of the TNVAT Act, 2006. Thereafter, notice for revision of assessment was issued on the petitioner for revising the above said assessment. The petitioner made objections through communication dated 27.11.2017, mainly by contending that the proposed revision of assessment is barred by limitation. However, the respondent passed the impugned revision of assessment.

4. The main contention of the petitioner before this Court is that when, admittedly, the order of assessment under Section 22(2) of the Tamil Nadu Value Added Tax Act, 2006, was passed on 06.09.2010, the very issuance of notice for revision of assessment on 03.11.2017 is barred by limitation since, such revision can be made within 5 years upto 2012 and within 6 years after 2012. It is further contended that as the very notice itself was issued after 7 years, the impugned proceedings is hopelessly barred by limitation. It is also pointed out before this Court that the respondent has erroneously referred to the date of the original assessment order as 31.10.2012, while infact the same was made only on 06.09.2010.

5. The counter affidavit is filed by the respondent justifying the impugned proceedings. It is also stated in the counter that the petitioner was not eligible for deemed assessment for the year 2007-08 and therefore, the notice issued is not barred by limitation.

6. The petitioner is aggrieved against the revision of assessment. There is no dispute to the fact that original order of assessment was made on 06.09.2010 on self-assessment basis in accordance with Section 22(2) of the TNVAT Act, 2006, as it is evident from the order issued by the respondent dated 06.09.2010, made available in the typed set of papers. It is this assessment sought to be revised after a period of 7 years. There is no dispute to the fact that revision of assessment notice was issued only on 03.11.2017 which is undoubtedly beyond the period of limitation. Moreover, the date of original assessment referred to in this revision notice as 31.10.2012 is also factually incorrect since, such assessment was made under CST and not under Tamil Nadu Value Added Tax Act, 2006. As already stated supra, the assessment under the Tamil Nadu Value Added Tax Act, 2006, was made only on 06.09.2010, and therefore, the limitation has to start to run only from the said assessment. Therefore, the respondent

is not entitled to take advantage of the date of assessment made under the CST to get over the period of limitation while revising the order of assessment made under VAT Act.

7. Therefore, this Court is fully convinced that the impugned assessment proceedings is barred by limitation and the same cannot be sustained. Accordingly, on the sole ground of limitation, the Writ Petition is allowed and the impugned order is set aside. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS-CCC)

// True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (ST)
Anna Salai Assessment Circle,
No.1 PAPJM, Building Annex, 4th Floor,
Greams Road, Chennai - 600 006.

+ 1 CC TO THE SPL. GOVT. PLEADER (TAXES), SR 67149

+ 1 CC TO MR.N.INBARAJAN, ADVOCATE SR 67190

KR/11/10/18

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