BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **03.09.2018**

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)Nos.11954 to 11957 of 2018
and
W.M.P.(MD).Nos.10920 to 10923 of 2018

Tvl.Senthil Spinners Pvt. Ltd.,
rep. by its Director R.Arunkarthick,
No.278, Thadicombu Road,
Dindigul. .. Petitioner in all these petitions

Vs.

The Assistant Commissioner (ST)-1,
Commercial Tax Building,
Dindigul. .. Respondents in all these petitions.

COMMON PRAYER: Writ Petitions have been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in TIN 33905200300/2007-08, TIN 33905200300/2008-09, TIN 33905200300/2009-10 and TIN 33905200300/2010-11, respectively dated 28.03.2018, issued by the respondent and quash the same as arbitrary, illegal and against the principles of natural justice and direct the respondent to pass assessment orders afresh, after considering the representation, dated 23.01.2018, 18.01.2018 and 09.03.2018 .

For Petitioner in all the petitions : Mr.N.Sudalaimuthu for Mr.S.Karunakar

For Respondent in all the petitions : Mr.R.Murugan, Additional Government Pleader

COMMON ORDER

These writ petitions have been filed by the petitioner challenging the revised assessment orders dated 28.03.2018 passed by the respondent for the assessment years 2007-2008, 2008-2009, 2009-2010 and 2010-2011.

2.When these matters came up for hearing today, the learned counsel appearing for the petitioner submitted that, on 30.06.2012 the self assessment was made under Section 22(2) of the TNVAT Act for the assessment years 2007-2008, 2008-2009, 2009-2010 and 2010-2011. As per Section 27 of the TNVAT Act, which was prevailing during the relevant period, a revision of assessment can be made within five years from the date of original order. In these matters, as the assessment has already been over for the above said assessment years on 30.06.2012, any revision proceedings can be initiated on or before 30.06.2017. But, the respondent has initiated the revision proceedings only on 24.11.2017 ie., beyond the period of five years and therefore, the impugned orders are barred by limitations and thus, he prayed to set aside all the impugned orders.

3. In support of above submission, the learned counsel appearing for the petitioner relied upon an unreported decision of a learned Single Judge of this Court in **Thiru.S.Philip Vs. The Commercial Tax Officer, (W.P.(MD).No.9500 of 2015), dated 01.04.2015**, wherein this Court has held in paragraph Nos. 3 to 4 as follows:

> "3. According to the petitioner, the revision order was passed on 25.02.2015, beyond 5 years and the authority has taken note of the omitted provision that the period of limitation is six years and passed the order which is not permissible in law. It is further submitted by the petitioner that beyond the period of limitation, no proceedings can be initiated and the amended Act 23 of 2012 increasing the period of six years from the date of assessment came into effect only from 19.06.2012 as could be seen from the provision which is extracted supra. It is further contended by the learned counsel for the petitioner that the respondent cannot apply the amended provision for the assessment period which is already over. In support of his contention, the learned counsel for the petitioner relied on the decision of this Court in **Universal Abrasives Vs. Commercial Tax Officer, Manali Assessment Circle, Chennai** reported in **(2014) 68 VST 386 (Mad)**, wherein this Court has held as follows:
>
> "allowing the appeal, that under Section 16(1) as it stood prior to amendment where the whole or any part of the turnover of business of a dealer had escaped assessment of tax, the assessing officer had power to revise the assessment at any time within a period of five years from the expiry of the year to

> which the tax related. In the present case, the assessment year was 1997-98 and the period of five years expired on March 31, 2003. The proceedings issued on August 23, 2004 were well beyond the period of five years and clearly barred by limitation. The amended provision which came into effect from July 1, 2002 and under which the limitation period commenced from the date of final assessment order, came into effect prospectively and not retrospectively. There is nothing in the amended provision of Section 16(1)(a) to show that it was intended to operate retrospectively.
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> 4.In view of the principle laid down in the decision mentioned supra, this Court has no other option except to set aside the impugned order and this Court is not inclined to remit the matter back to the authority concerned as contended by the respondent."

4. The above decision is squarely applicable to the facts and circumstances of this case, as in this case also the revision proceedings have been belatedly initiated only on 24.11.2017 ie., beyond the period of five years and therefore, all the impugned orders are liable to be set aside as barred by limitation.

5. In the result, these writ petitions are allowed and the impugned orders, dated 28.03.2018, passed by the respondent for the assessment years 2007-2008, 2008-2009, 2009-2010 and 2010-2011, are set aside. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar(CS-I)

To
The Assistant Commissioner (ST)-1,
Commercial Tax Building,
Dindigul.

+2 CC To MR.S.KARUNAKAR, Advocate SR. NO. 81860 & 81859

Common Order made in
W.P(MD)Nos.11954 to 11957 of 2018
03.09.2018

TR/SV/SAR-I(11.10.2018)3P 4C