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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD) No.15762 of 2018
and
W.M.P.(MD).No.14121 of 2018

Tvl.Sri Kailash Chemicals
rep. by its Partner,
Mr.Bajranglal Chowdhury
No.126-A/2, New Colony
Tuticorin-628 003. ... Petitioner

vs.

The State Tax Officer (Main)
Tuticorin-III. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the impugned proceedings passed by the respondent in TIN No.33655921972/2010-11, dated 23.05.2018 and quash the same as the same is illegal, arbitrary and without jurisdiction as the same is barred by limitation as per the provisions of the Tamil Nadu Value Added Tax Act, 2006 and also in view of the judicial decisions rendered by this Honourable High court in the case of M.U.A Arumugaperumal and Sons Vs. Additional Commercial Tax Officer (FAC), Srivilliputhur reported in 16 VST 188 [2008] and also in the case of Tvl.India Cycle Stores Vs. The Assistant Commissioner (CT), Bazaar Assessment Circle, Salem in W.P.No.32201 of 2017, dated 23.01.2018 and also to pass such further or other orders as this Honourable High Court may deem fit and proper.

For Petitioner : Mr.K.Srinivasan
For Respondent : Mr.A.MuthuKaruppan
Additional Government Pleader

O R D E R

Challenge in this writ petition is to the assessment order passed by the respondent, in proceedings in TIN No.33655921972/2010-11, dated 23.05.2018 and quash the same.

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2.According to the petitioner, he submitted his return for the assessment year 2010-11 and it was finally assessed on 15.06.2012 and an assessment order was also issued on 15.06.2012. Thereafter, a revision notice, dated 19.04.2018 was issued for reversal of Input Tax Credit on the ground of mismatch turn over. The petitioner did not file any objection and therefore, the proposals were confirmed. Challenging the order passed by the respondent, the petitioner is before this Court.

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3.According to the respondent, revision notice issued by the respondent is barred by limitation.

4.I have considered the contentions of both sides.

5.Section 27 of TNVAT Act, 2006 reads as under:

> "**27.Assessment of escaped turnover and wrong availment of input tax credit:**
>
> (1) (a) Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of sub-section (3), at any time within a period of six years from the date of assessment, determine to the best of its judgment the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary.
>
> (b)Where, for any reason, the whole or any part of the turnover of business of a dealer has been assessed at a rate lower than the rate at which it is assessable, the assessing authority may, at any time within a period of five years from the date of assessment, reassess the tax due after making such enquiry as it may consider necessary."

6.As per the provision, in case there is an escaped turn over, action should be taken within a period of 5 years, as per the unamended provision of the Act. In the instant case, the original assessment order was passed on 15.06.2012. If at all, an action can be taken for the escaped turn over, the authority should have taken action on or before 15.06.2017. Whereas in the instant case, notice was issued on 19.04.2018. This is beyond the period of limitation, specified under Section 27 of the TNVAT Act, 2006. Therefore, initiation of proceedings is hit by limitation.

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7.Accordingly, the impugned order is not sustainable, as per

Section 27 of the TNVAT Act, 2006. Accordingly, the impugned order, passed by the respondent, dated 23.05.2018 is set aside. In the result, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-III)

To:

The State Tax Officer (Main)
Tuticorin-III.

+ 1 CC TO Mr.K.SRINIVASAN, ADVOCATE IN SR No. 75506

VS
TE/RP/SAR-3 : 24/08/2018 : 3P/3C

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(1/2)