BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.10.2018
CORAM:
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.654 of 2011
and
M.P.(MD).No.2 of 2011

M/s.Dhanalakshmi Fine Arts,
represented by its proprietor
Thiru P.Mahendran,
D.No.6-A, Puhazenthi Street,
Sivakasi,
Virudhunagar District. .. Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
2nd Floor, Elilagam,
Chepauk,
Chennai – 600 005.

2.The Commercial Tax Officer-I,
C.T. Buildings,
Satchaiyapuram,
Sivakasi,
Virudhunagar District. .. Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records relating to the assessment order passed by the 2nd respondent in his proceedings CST 500519/03-04, dated 30.09.2010 received by the petitioner on 13.10.2010 and quash the same.

For petitioner : Mr.A.S.Mujibur Rahman
For respondents : Mr.D.Muruganandham,
Additional Government Pleader

ORDER

This writ petition has been filed by the petitioner challenging the revised assessment order dated 30.09.2010 passed by the 2nd respondent for the assessment year 2003-04.

2.When this matter came up for hearing today, the learned counsel appearing for the petitioner submitted that as per Section 27 of the TNVAT Act, which was prevailing during the relevant period, a revision of assessment can be made only within five years from the date of original order. In this case, the original assessment order has been passed on 10.05.2005 and therefore, any revision proceedings can be initiated on or before 10.05.2010. But, the second respondent has initiated the revision proceedings by issuing pre-revision notice only on 21.06.2010 ie., beyond the period of five years and therefore, the impugned order is barred by limitations and thus, he prayed to set aside the impugned order.

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:
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> "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 proceeding has been belatedly initiated only on 21.06.2010 ie., beyond the period of five years and therefore, the impugned order is liable to be set aside as barred by limitation.

5. In the result, this writ petition is allowed and the impugned order, dated 30.09.2010, passed by the second respondent for the assessment year 2003-04 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1.The Commissioner of Commercial Taxes,
2nd Floor, Elilagam,
Chepauk, Chennai - 600 005.

2.The Commercial Tax Officer-I,
C.T. Buildings,
Satchaiyapuram,
Sivakasi, Virudhunagar District.

+1CC to Mr.Mohamed Ibrahim Ali, Advocate, SR.No.88171
+1CC to the Special Government Pleader SR.No. 88192

W.P(MD)No.654 of 2011
01.10.2018

GCG
ES/SKN/RSK/SAR 4/31.10.2018/3P/5C