BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)No.6805 of 2011
and
MP(MD)No.1 of 2011

M/s.C.V.S.Traders,
Represented by its Proprietor,
C.Velu : Petitioner

Vs.

The Commercial Tax Officer,
Srirangam Circle,
Trichy. : Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records on the file of the respondent in TNGST No.3462336/2003-04, dated 31.03.2011 and quash the same as illegal, arbitrary and without jurisdiction.

For Petitioner : Mr.S.Karunakar
For Respondent : Mrs.J.Padmavathi Devi, Special Government Pleader

ORDER

Challenge to the Writ Petition is the order of assessment passed by the respondent in TNGST No.3462336/2003-04, dated 31.03.2011.

2. The petitioner was a dealer in white kerosene and was an assessee under the Tamil Nadu General Sales Tax Act, 1959. Since exemption was granted on second sale of white kerosene, the surcharge was not levied on its first sale. After litigations before the High Court and the Hon'ble Supreme Court, levy of surcharge and also levy of Resale tax on white kerosene were upheld. Therefore, the respondent issued a revision notice on 04.03.2011 and the impugned assessment order was passed on 31.03.2011. The petitioner challenged the assessment order on the ground that it is barred by limitation. According to him, the original notice was issued on 20.11.2003 and assessment order was passed on 23.05.2005. As per Section 16 of the Tamil Nadu General Sales Tax Act, 1959, the assessment of tax payable on the escaped assessment shall be within a period of five years from the date of order of the final assessment by the assessing authority. Since the original order of

assessment was passed on 23.05.2005, the revision notice as well as the assessment order passed in the year 2011 are barred by limitation.

3. Controverting the arguments of the learned counsel for the petitioner, the learned Special Government Pleader appearing for the Commercial Tax Officer would contend that the Department has initiated action within five years and issued notice on 20.11.2003 and the original assessment order was passed on 23.05.2005. However, the assessment for the year 2003-2004 made in 2005 was challenged before this Court and the matter was pending till 2009. Therefore, the period during which the subject matter involving a question of law pending before the Court should be excluded as per Section 16(5) of the Tamil Nadu General Sales Tax Act, 1959 and, therefore, the order passed by the respondent is within the time limit and it is not barred by limitation.

4. I have considered the rival contentions.

5. On perusal of the records, it is noted that originally the respondent issued a notice on 20.11.2003 demanding surcharge at 5% payable to the department. On 23.05.2005, the assessment order was also passed under Form-19. In the meanwhile, a batch of Writ Petitions were filed questioning the legality of exempting surcharge and resale tax. The said Writ Petitions were decided on 23.12.2009 upholding the levy of surcharge and resale tax, against which, a Writ Appeal was also preferred and ultimately, the matter reached finality, by judgment of the Hon'ble Supreme Court. The contention of the respondent is that the period during which the subject matter was subjudice between 2005-2009 shall be excluded. If the limitation is calculated on that basis, the revision notice can be issued till 23.05.2013, whereas, the assessment was made as early as on 31.03.2011. A reading of Section 16(5) of the Tamil Nadu General Sales Tax Act, 1959, will be beneficial for the interpretation of period of limitation.

6. Section 16(5) and Section 16(6) of the Tamil Nadu General Sales Tax Act, 1959, read as under:

> "Section 16(5)- In computing the period of limitation for assessment or reassessment under this Section, the time during which any appeal or other proceeding in respect of any other assessment or reassessment is pending before the Special Tribunal or the Supreme Court involving a question of law having a direct bearing on the assessment or reassessment in question, shall be excluded."
>
> "Section 16(6) - In computing the period of limitation for assessment or reassessment under this Section, the time during which any appeal or proceeding in respect of any assessment or reassessment of the same or part of the turnover made under any other enactment was pending before any appellate or revisional authority or the Special Tribunal or the Supreme Court shall be excluded."

7. As per Section 16(5), in computation of the period of limitation for assessment or reassessment, the time during which any appeal or other proceeding in respect of any other assessment or reassessment is pending before the Special Tribunal or the Supreme Court involving a question of law, shall be excluded.

8. In the instant case, surcharge and resale tax levied on white kerosene was the subject matter involving the question of law and was pending till 2009.

9. Considering the import of Section 16(5) of the Tamil Nadu General Sales Tax Act, 1959, it is clear that the period during which the matter was pending before the Court shall be excluded for the purpose of calculating limitation. In such view of the matter, the contention of the respondent that the action taken by them is within the limitation period has to be accepted. Therefore, I do not find any delay in the revised assessment order passed by the respondent. In such circumstances, the contention of the learned counsel for the petitioner that the impugned order is barred by limitation is not sustainable.

10. In the result, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

The Commercial Tax Officer,
Srirangam Circle,
Trichy.

+1cc to M/S.S.Karunakar, Advocate SR.No. 61019
+1cc to Special Government Pleader, SR.No. 61034

Order made in
W.P(MD)No.6805 of 2011
Dated: 11.04.2018

sml
JM/SV MMS/SAR 2/08.05.2018/3P/4C