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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)No.8335 of 2011
and
M.P.(MD)No.1 of 2011

Tvl.Sri Kamatchiamman Traders,
rep. by its Proprietor,
M.S.Suhumar : Petitioner

Vs.

The Commercial Tax officer (FAC),
Periyakulam. : 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 CST No.134703/2003-04, dated 30.06.2011 and quash the same as invalid, without authority of law and barred by limitation as prescribed under Section 9(2) of the Central Sales Tax Act, 1956 read with Section 27(1)(a) of the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner : Mr.A.Chandrasekaran
For Respondent : Mr.A.Muthukaruppan,
Additional Government Pleader

ORDER

Challenge in this Writ Petition is to the revised order of assessment passed by the respondent dated 30.06.2011.

2. According to the petitioner, the final assessment order was made on 21.03.2005. The revision ought to have been made within five years, that is to say, on or before 21.03.2010. Since the pre-revision notice was issued only after six years, it is barred by limitation.

3. Controverting the submissions made by the petitioner, Mr.A.Muthukaruppan, learned Additional Government Pleader would submit that action was initiated well within time. Notices were issued on 29.04.2005, 02.06.2005, 16.06.2005 and 20.07.2006. Despite notices being sent to the registered office as well as the branch office, the petitioner did not appear for personal hearing fixed on 20.07.2006. Therefore, the pre-revision notice is well within time and the Writ Petition is liable to be dismissed.

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4. This Court has called for files relating to the pre-revision notice. From the files, it could be seen that the notices were sent by ordinary post and were returned as "closed". As per Rule 52 of the Tamil Nadu General Sales Tax Rules, 1959, service of notice shall be effected in a particular manner, by giving or tendering it to the dealer or his manager or agent or the legal practitioner or his authorised representative. If they are not found, by giving or tendering it to any adult member of his family; or if the address of such dealer is known, by sending it to him by registered post; or if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence. But, without adopting any of the modes, the respondent has sent the notices of hearing dated 29.04.2005, 02.06.2005, 16.06.2005 and 20.07.2006 by ordinary post. In the counter also, a specific averment is made that the notices were returned "unserved". In the absence of service of notice, it cannot be construed that the action was initiated by the respondent within the time limit prescribed under the Act.

5. As per Section 27 of the Tamil Nadu Value Added Tax Act, 2006, the assessment of escaped turnover shall be made within five years. Section 27 (1)(a) reads as under:

> "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 five years from the date of final assessment order by the assessing authority, 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."

6. Admittedly, the pre-revision notice is dated 24.05.2011 after a period of six years. In such circumstances, it is crystal clear that the respondent has taken action after the statutory period of five years, which is barred by limitation. In such circumstances, the impugned order passed by the respondent in CST No.134703/2003-04, dated 30.06.2011, is without jurisdiction and beyond the period of limitation. Therefore, the impugned order is liable to be set aside.

7. In the result, the Writ Petition is allowed and the impugned order dated 30.06.2011 is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

/True copy/

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Sub Assistant Registrar

To

The Commercial Tax officer (FAC),
Periyakulam.

+1cc to Special Government Pleader, SR.No.67376.
+1cc to Mr.A.Chandrasekaran, Advocate, SR.No.67186.

Order made in
W.P.(MD)No.8335 of 2011
07.06.2018

SML

RAM/JC/SAR 3/21.06.2018/3P/4C

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