IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 29.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.2100 of 2019
and W.M.P.Nos.2354 & 10148 of 2019
and WMP No.10148 of 2019

M/s.Neyveli Lignite Corporation Limited
J.N.Salai, Block 26,
Neyveli - 607 803. .. Petitioner

Vs.

1.Assistant Commissioner (ST)-FAC
Cuddalore Taluk Assessment Circle.

2.Commissioner of State Taxes
Chepauk, Chennai - 05.

3.Government of Tamil Nadu
Represented through its Secretary
Department of Commercial Taxes
Tamil Nadu Secretariat. .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records relating to the impugned notice in TIN:33894400007/2010-11 dated 05.07.2018 issued by the first respondent and quash the same and pass such other order or orders as the Hon'ble Court may deem fit and proper in the facts and circumstances of the case and render justice.

For Petitioner : Mr.Raghavan Ramabadran

For Respondents : Mr.Mohammed Shaffiq
Special Government Pleader (Taxes)

ORDER

Mr.Raghavan Ramabadran, learned counsel on record for writ petitioner and Mr.Mohammed Shaffiq, learned 'Special Government Pleader' ('SGP' for brevity) on behalf of all respondents are before this Court.

2. With consent of learned counsel on both sides, main

writ petition is taken up, heard out and is being disposed of.

3. Subject matter of this writ petition arises under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)', which shall hereinafter be referred to as 'TNVAT Act' for the sake of convenience and clarity. The assessment year, which is subject matter of the instant writ petition is 2010-11.

4. In the previous hearings, i.e., on 24.06.2019 and 08.07.2019, inter alia with the intention of narrowing down the issue in these writ petitions, proceedings were recorded by this Court and the same read as follows:

24.06.2019

> 'Ms.R.Charulatha of M/s.Lakshmi Kumaran and Sridharan Associates (law firm) for writ petitioner and Ms.G.Dhanamadhri, learned Government Advocate on behalf of all the three official respondents are before this Court.
>
> 2. Subject matter of the writ petition arises under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32/2006)' [hereinafter referred to as 'TNVAT Act']. A notice dated 05.07.2018, bearing reference No. TIN:33894400007/2010-11 (hereinafter 'Impugned Notice' for brevity) has been called in question in the instant writ petition. A counter affidavit dated 11.02.2019 has also been filed on behalf of all the respondents. The deponent of the counter affidavit is the 1st respondent i.e., jurisdictional Assistant Commissioner.
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> 3. Pivotal and primordial point that has been urged is that the impugned notice is barred by limitation or in otherwords, it is hit by Section 27 (1) (a) of TNVAT Act. It is the specific submission of learned counsel for writ petitioner that the assessment year, which is the subject matter of the instant writ petition is 2010-2011, deemed assessment for the same happened on 30.06.2012, and 6 years therefrom lapsed on 30.06.2018, but the impugned notice has been issued 4 days later on 05.07.2018.
>
> 4. At this juncture, suffice to say that the aforesaid submission of the writ petitioner will have to be examined. A perusal of the counter affidavit dated 11.02.2019 reveals that trajectory which the file has taken or in other words, the trajectory of proceedings in the Department concerned which culminated in the impugned notice needs to be looked into.
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> 5. Learned Government Advocate shall produce the file in this case in the next listing.

> 6. List on 08.07.2019. The Officer concerned namely, the 1st respondent shall remain present in Court along with the files in the next listing.'
>
> 08.07.2019
>
> 'Mr.Raghavan Ramabadran of M/s.Lakshmi Kmaran & Sridharan Attorneys [Law Firm] on behalf of writ petitioner and Mr.Mohammed Shaffiq, learned Special Government Pleader (Taxes) on behalf of all the three respondents assisted by Ms.G.Dhanamadhri, learned Government Advocate are before this Court.
>
> 2. Read this in conjunction with and in continuation of earlier proceedings/orders of this Court dated 24.06.2019.
>
> 3. Pursuant to aforesaid earlier proceedings, more particularly paragraph 6, learned State counsel submitted that the first respondent is personally present in Court and the Officers concerned including the one who passed the order as well as the present incumbent are before this Court. It is submitted that an additional counter affidavit has since been served on the writ petitioner and time is sought for filing the same in the Registry and bringing it on Board in the next listing.
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> 4. Learned State Counsel submits, on instructions, that revisional notice was issued on 05.07.2018 due to inadvertence, but the same may not render the notices hit by six years limitation. This is a matter for arguments, but the scenario could have been avoided if the revision notice had been issued five days earlier.
>
> 5. Be that as it may, at the request of State counsel, the presence of the first respondent and aforementioned other officers is dispensed with for the present.
>
> 6. List this matter on 25.07.2019.'

5. Thereafter, instant writ petition was listed on 25.07.2019, adjourned, listed today and is being heard out today.

6. Continuing from the previous hearings, learned counsel before this Court submitted that the issue, which needs to be resolved in the instant writ petition is whether the report given by the Enforcement Wing on 22.07.2016 (post inspection) will save limitation for the Revenue. As would be evident from the earlier proceedings, date of assessment is 30.06.2012 and six years therefrom lapsed on 30.06.2018, but the impugned notice has been issued four days later on 05.07.2018.

7. For the purpose of clarity and for the purpose of stating with specificity, while the report given by the

Enforcement Wing on 22.07.2016 (post inspection) is prior to 30.06.2018, the impugned revisional notice dated 05.07.2018 is after the date on which aforesaid six years limitation period elapsed.

8. Today, the SGP/learned Revenue Counsel i.e., State Counsel contended that assessment is a continuing process and the report given by the Enforcement Wing on 22.07.2016 (post inspection) should be deemed to be part of assessment proceedings and therefore, that will save limitation. In other words, learned Revenue/State Counsel does not dispute that if the date of impugned revisional notice i.e., 05.07.2018 is taken, the impugned order is beyond six years and therefore, barred by limitation. Saying so, learned SGP wanted this Court to construe date of report given by Enforcement Wing (post inspection) as reckoning date to arrive at dates on which limitation stood arrested.

9. Therefore, the neat question, which falls for consideration in this writ petition is whether the report given by the Enforcement Wing Official on 22.07.2016 (post inspection) can be construed as 'determination' by adopting best judgment method within the meaning of Section 27(1)(a) of TNVAT Act. To be noted, this case falls under Section 27(1)(a) of TNVAT Act.

10. Therefore, the entire matter now turns on what the term 'determine', occurring in Section 27(1)(a) of TNVAT Act, would mean.

11. In this context, learned State Counsel pressed into service judgments reported in 1969 (2) SCC 396 [The Sales Tax Officer and Another Vs. Messrs Subdarsanam Iyengar and Sons], (1980) 46 STC 327 [K.Lakshmanaswami Chettiar and Sons V. State of Tamil Nadu], 1982 49 STC 58 Mad [Jeewanlal (1929) Ltd. Vs. State of Tamil Nadu] and (1981) 18 STC 193 [B.G.Natarajan Vs. The Deputy Commercial Tax Officer, Pollachi West]. These judgments are for the proposition that determination is initiation of assessment. There is no disputation that initiation of assessment is qua the dealer happened prior to 22.07.2016 when inspection took place based on which report of the Enforcement Wing dated 22.07.2016 was given. To be noted, with regard to the report given by the Enforcement Wing, the Assessing Officer is not bound by the same. The Assessing Officer is not only empowered to apply his mind independent of the report, but a sanctus duty and obligation is cast on the Assessing Officer to apply his mind independent of the Enforcement Wing report. Therefore, the report given by the Enforcement Wing on 22.07.2016 or date of inspection prior to the same cannot be construed as initiation of assessment qua the writ petitioner dealer. Writ petitioner dealer would not know

the fate of the inspection and the report on 22.07.2016, as it is for the respondent to decide whether to issue revisional notice and proceed with revision of assessment or not and that the respondent has decided to proceed with revision of assessment under Section 27(1)(a) of TNVAT Act was communicated to the writ petitioner only on 05.07.2018 when impugned revisional notice came to be served on the writ petitioner. Therefore, 'determine' as occurring in Section 27(1)(a) of TNVAT Act is necessarily determination qua the writ petitioner dealer. This is clearly beyond six years from the date of assessment, which is 30.06.2012.

12. There were some other judgments also which were pressed into service by learned SGP viz., National Thermal Power Co. Ltd Vs, Commissioner of Income-Tax reported in [1998] 229 ITR 383 (SC) and full judgment of this Court being judgment in State of Tamil Nadu Vs. Arulmurugan and Company reported in (1982) 51 STC 381. In the considered view of this Court, these judgments and the principles thereunder do not help the Revenue in the instant case as those are cases where different stages of assessment and the time frames fixed for the same where under consideration. For instance, in Arulmurugan case, the neat question, which Hon'ble Supreme Court addressed itself to is whether an appellate authority can entertain C form declarations filed by a registered dealer at the appellate stage either under the Central Sales Tax Act, 1956 or the Rules made thereunder in the light of time limit prescribed under Rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957. Source for this rule is traceable to Section 8(4) of Central Sales Tax Act. Be that as it may, suffice to say that this is with regard to part/stage of assessment proceedings and not a case where limitation is prescribed for determining the assessment by revision.

13. This takes us to the term 'determine' occurring in Section 27(1)(a) of TNVAT Act.

14. Before that, it may be necessary to have a bird's eye view of what the term 'Assessing Authority' means. Learned State Counsel drawing the attention of this Court to Section 2(5) of TNVAT Act submitted that the term Assessing Authority has been defined and the same reads as follows:

> '2.Definitions:
> (1).....
> (2).....
> (3)....
> (4).....
> (5) “Assessing authority” means any person authorised by the Government or by the Commissioner to make any assessment under this Act;

15. Furthering his submission in this direction, learned State Counsel attempted to protagonise a theory that 'Enforcement Wing Officer' should be construed as 'Assessing Officer'. The issue turns on whether the Enforcement Wing Officer can also be construed as an Assessing Officer. Obviously in the light of the undisputed obtaining position that the Assessing Officer has a sanctus duty to apply his mind independent of the Enforcement report not only with regard to issue of revisional notice, but even post revisional notice while making the revised assessment order, this argument does not carry the Revenue any further.

16. Therefore, the crux and gravamen of cases on hand is the term 'determine' occurring in Section 27(1)(a) of TNVAT Act. For the purpose of ascertaining the meaning of the term 'determine' occurring in Section 27(1)(a) of TNVAT Act, this Court took recourse to P.Ramanatha Aiyar The Law Lexicon - Second Edition. The term 'Determine' in P.Ramanatha Aiyar The Law Lexicon- Second Edition reads as follows:

> 'Determine: To fix all boundaries of ; to mark off ; to separate to fix the determination of ; to limit ; to bound ; to bring to an end ; to fix the form or character of ; to shape ; to regulate ; to settle ; to prescribe imperatively ; to ascertain definitely ; to bring to a conclusion ; to settle by judicial sentence ; to decide.
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> Determine: 1. to settle or decide ; to come to a decision ; to lay down decisively or authoritatively ; 2. to put and end to ; 3. to ascertain definitely.
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> "DETERMINE". Travacancord Cochin General Sales tax Rules (1950) R.33.
>
> The use of the words "proceed to assess" and 'determine' would not lead to different consequences or result. S.T.Officer V. Yengar and Sons, AIR 1970 SC 311 at 313, 314.
>
> A statutory power to a government department to determine questions does not enable it to legislate or make it an autocrat free to act as it pleases ; it must exercise, and act with discretion, and if that be not done in a bonafide manner the King's Bench can and will interfere. (Sroud)'

17. A perusal of the above reveals that the most relevant explanation of the term 'determine' in the factual setting and contextual backdrop of cases on hand, is 'proceeded to assess and determine would not lead to different consequences or result'. Interestingly, this explanation in the Law Lexicon has been given by drawing inspiration from Yengar and Sons case being S.T.Officer V. Yengar and Sons reported in AIR 1970 SC 311, which has been referred to in the P.Ramanatha Aiyar The Law

Lexicon- Second Edition. Therefore, the term 'determine' even as used in the context of fiscal law statute and even on the basis of judgments/case laws pressed into service by learned State Counsel would necessarily mean that the respondent should proceed to assess. What is of importance is proceeding to assess is qua writ petitioner dealer, as alluded to supra. In the considered view of this Court, 'proceeding to assess' qua writ petitioner dealer occurred only on 05.07.2018, when the impugned revisional notice was issued. Therefore, if the date of impugned revisional notice is taken as the reckoning date, it is clearly after six years from the date of deemed assessment i.e., 30.06.2018. This Court hastens to add that to test with exactitude, date of service of revisional notice on writ petitioner is relevant. In case on hand it has been averred in the affidavit filed in support of the writ petition that revisional notice was served on writ petitioner on 18.07.2018, but that pales into insignificance as the very date of revisional notice is beyond the period of limitation. Obviously service of a notice on the noticee cannot be prior to the date of the notice itself. Wharton's Law Lexicon Fifteenth Edition, with regard to the term 'determine' reads as follows:

> 'Determine, that there may be a lis between the parties and they have to be heard before a final conclusion is arrived at by the Managing Director, S.K.Bhargava Vs. Collector Chandigarh, (1998) 5 SCC 170.

18. Interestingly, P.Ramanatha Aiyar The Law Lexicon- Second Edition and the term 'determine' as occurring therein has been taken recourse to, by a Hon'ble Supreme Court in Ashok Leyland case reported in [2004] 134 STC 473 [Ashok Layland Ltd. Vs. State of Tamil Nadu and another]. To be noted, Ashok Leyland case was rendered by a larger bench of Hon'ble Supreme Court and that was case dealing with Section 6-A of Central Sales Tax Act, 1956 Act, but this is being referred to for the limited purpose of saying that a larger Bench of Hon'ble Supreme Court has also relied on P.Ramanatha Aiyar The Law Lexicon- Second Edition for determining the dimensions and dynamics of the term 'determine'. In Ashok Leyland, paragraphs 75 to 77 are of relevance and the same read as follows:

> '75. The word "determination" must also be given its full effect to, which pre-supposes application of mind and expression of the conclusion. It connotes the official determination and not a mere opinion or finding.
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> 76. In Law Lexicon by P.Ramanatha Aiyar, Second Edition, it is stated :
>
> "Determination or order. The expression 'determination' signifies an effective expression of opinion which ends a controversy or a dispute by

some authority to whom it is submitted under a valid law for disposal. The expression 'order' must have also a similar meaning, except that it need not operate to end the dispute. Determination or order must be judicial or quasi-judicial. Jaswant Sugar Mills Ltd. V. Lakshmi Chand AIR 1963 SC 677, 680 [Constitution of India Art.136]".

77. In Black's Law Dictionary, 6th Edition, it is stated:

"A 'determination' is a 'final judgment' for purposes of appeal when the trial Court has completed its adjudication of the rights of the parties in the action. Thomas Van Dyken Joint Venture Vs. Van Dyken 90 Wis, 236, 279 N.W.2d 459, 463.'

19. In the light of the narrative thus far, this Court is of the considered view that reckoning date can at best be only the date of impugned revisional notice i.e., 05.07.2018.

20. Owing to all that have been set out supra, this Court has no difficulty in coming to the conclusion that impugned revisional notice which is admittedly under Section 27(1)(a) of TNVAT Act, is barred by limitation as contained in the very provision under which the revised assessment has been made i.e., Section 27(1)(a) of TNVAT Act, as the same have been determined after six years have elapsed from the date of deemed assessment.

21. To be noted, limitation is based on public law principle and it is based on the public law principle that one cannot be kept guessing in eternity. This public law principle also enures in favour of the interpretation and the considered view this Court has taken.

22. Impugned revisional notice is set aside and the writ petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

vsm

To

1.Assistant Commissioner (ST)-FAC
   Cuddalore Taluk Assessment Circle.

2.Commissioner of State Taxes
   Chepauk, Chennai - 05.

3.Government of Tamil Nadu
   Represented through its Secretary
   Department of Commercial Taxes
   Tamil Nadu Secretariat.

+1cc to Mr.Lakshmi Kumaran Advocate, S.R.No.65163
+1cc to the Spl Government Pleader(Taxes), S.R.No.65015

SVI(CO)
CB(26/09/2019)

W.P.No.2100 of 2019 and
W.M.P.Nos.2354 & 10148 of 2019
and WMP No.10148 of 2019