IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 16.04.2019

Delivered on : 30.04.2019

CORAM:

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.36497, 36865 and 36866 of 2006
and
M.P.Nos.1, 1 & 1 of 2006

Tvl. Super Recording Co. Ltd.,
No.713, Anna Salai,
Chennai - 600 006.
Rep. by its Managing Director. ... Petitioner
(in all Writ Petitions)

Vs.

The Commercial Tax Officer,
Anna Salai III Assessment Circle,
Chennai.
... Respondent
(in all Writ Petitions)

PRAYER IN W.P.NO.36497 OF 2006: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the Respondent in his Proceedings in CST/33533/1999-2000 dated 24.07.2006 and quash the same.

PRAYER IN W.P.NO.36865 OF 2006: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the Respondent in his Proceedings in CST/33533/2000-01 dated 24.07.2006 and quash the same.

PRAYER IN W.P.NO.36866 OF 2006: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the Respondent in his Proceedings in TNGST/0640332/2000-01 dated 24.07.2006 and quash the same.

For Petitioner : Mr.C.Baktha Siromani
(in all Writ Petitions)

For Respondents : Mr.Mohammed Shaffiq
Spl.Government Pleader(Taxes)
(in all Writ Petitions)

COMMON ORDER

The common issue that arises for consideration in these three Writ Petitions is whether the proceedings of the Respondent for revised assessment are barred by limitation.

2.The relevant facts relating to the assessment in the three cases are significant for the purpose of ascertaining the period of limitation. The relevant facts, in this regard, are as under:

2(i)W.P. No.36497 of 2006: The dispute pertains to the Assessment Year 1999-2000 and the Original Assessment Order was issued on 31.08.2001. Thereafter, on 16.09.2005, a pre-revision notice was issued under Section 16(1) of the Tamil Nadu General Sales Tax Act, 1959 (the TNGST Act). The Petitioner filed its objections thereto on 24.11.2005 stating, inter alia, that the proceedings are barred by limitation but the impugned order revising the assessment was issued on 24.07.2006.

2(ii). W.P. No. 36865 of 2006: The dispute relates to the Assessment Year 2000-2001 and the Original Assessment Order was issued on 31.10.2002 and a rectified order on 02.01.2003 in respect of CST. Thereafter, pre-revision notices were issued on 16.09.2005 and 31.10.2005. The Petitioner submitted its reply/objections thereto on 24.11.2005 citing limitation as a defence but the impugned order of revised assessment was issued on 24.07.2006.

2(iii). W.P. No. 36866 of 2006: The dispute relates to the Assessment Year 2000-2001 and the Original Assessment Order was issued on 31.10.2002 and a rectification order was issued on 02.01.2003 in respect of TNGST. Later, a pre-revision notice was issued by the Respondent on 16.09.2005 and the Petitioner filed its objections thereto on 24.11.2005 citing limitation as a defence but the revised assessment order dated 24.07.2006 was issued, which is impugned herein.

3. During the relevant assessment years, in all three Writ Petitions, Section 16(1) of the TNGST Act provided as under:

> Section 16. Assessment of escaped turnover. 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 (2), at any time within a period of five years from the expiry of the year to which the tax relates emphasis added), 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 and after giving the dealer a reasonable opportunity to show cause against such assessment.

Subsequently, Section 16(1) was amended with effect from 01.07.2002. The amended Section 16(1) reads as follows:

> "Where for any reasons, 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 (2) at any time within a period of five years from the date or order of the final assessment (emphasis added) 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 inquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such assessment."

4. On the basis of the facts set out above and the limitation period specified in the pre-amendment and post-amendment S.16(1), the relevant dates in each of the Writ Petitions are set out in the table below:

W.P. No.	AY	Original Assessment Order Date	Expiry of Limitation period under pre-amended Section 16(1) of the TNGST Act.	Expiry of Limitation period as per the amended Section 16 (1) of the TNGST Act	Pre-Revision notice Date
36497	1999-2000	31.08.2001	31.3.2005	31.08.2006	16.09.2005
36865	2000-2001	31.10.2002	31.3.2006	31.10.2007	16.09.2005
36866	2000-2001	31.10.2002	31.3.2006	31.10.2007	16.09.2005

5.From the above table, it is evident that the revision of assessment in W.P. No.36497 of 2006 would be barred by limitation if the pre-amended Section 16(1) of the TNGST Act is applied to determine limitation. As regards W.P. Nos.36855 and 36866 of 2006, the pre-revision notices were issued within the period of limitation, as per the pre-amended Section 16(1), and an additional question would arise as to whether that is sufficient to save limitation. In specific terms, the starting point of limitation under the pre-amended Section 16(1) of the TNGST Act is five years from the end of the assessment year to which the assessment proceedings relate. On the contrary, as per the amended Section 16(1) of the TNGST Act, the starting point of limitation is the date of the final assessment order and re-assessment proceedings may be initiated within five years from the date of the said assessment order. In effect, if the amendment that came into force on 01.07.2002 is held to be applicable to the re-assessment proceedings, the re-assessment in all three Writ Petitions would be, undoubtedly, within the limitation period.

6.In view of the above facts, the critical issue to be considered and decided in these cases is whether the amended Section 16(1) of the Act is applicable or not and an ancillary issue would be whether the issuance of pre-revision notices is sufficient to save limitation in W.P. Nos. 36865 and 36866 of 2006.

7.At the hearing, the learned counsel appearing for the Petitioner in all the three Writ Petitions submitted that the Petitioner was a manufacturer of pre-recorded audio cassettes. He further states that the Original Assessment Order was issued by the Respondent on 31.08.2001 in respect of the Assessment Year 1999-2000 in W.P.No.36497 of 2006. Thereafter, he states that a revision notice was issued on 16.09.2005 on the basis of alleged wilful suppression. According to the learned counsel, even the revision notice is barred by limitation in as much as the limitation period expired on 31.03.2005 whereas the revision notice was issued on 16.09.2005. Consequently, he states that the revised assessment order, namely, the Impugned Order dated 24.07.2006 is hopelessly barred by limitation. He further submits that the revised assessments in W.P.Nos.36865 and 36866 of 2006, which relate to the Assessment Year 2000-2001, are also barred by limitation. In specific terms, he submits that the limitation period in both the cases expired on 31.03.2006, whereas the revised assessment orders, namely, the Impugned Orders therein, were issued on 24.07.2006. In order to substantiate his submissions, the learned counsel for the Petitioner referred to the following judgments, which are set out below with a brief description of the context therein:

(1)State of Tamil Nadu vs. M. M. Mohideen Thamby, 101 STC 86(DB) (Mad): the dispute relates to the assessment year 1976-77 and a revision notice issued after the five year period under the pre-amended S.16(1) was held to be barred by limitation.

(2)Baba Knitters vs. CTO, W.P. No.15137 of 2004:this dispute relates to the assessment year 1996-97 and a revision notice issued on 31.03.2004 was held to be barred by limitation.

(3)Nethaji Readymade Vs. Deputy Commercial Tax Officer, Nagercoil,(2012) 47 VST 20 (Mad): the dispute relates to the assessment year 2001-02, the original assessment order was issued on 30.05.2003 and the pre-revision notice that was issued on 7.7.2008 was held to be barred by limitation.

(4)S.Philip Vs. CTO Jayankondam in W.P.No.9500 of 2015, Order dated 01.04.2015: the dispute related to the assessment year 2007-08, the original assessment order was issued on 09.03.2011 and the revised assessment order issued on 25.02.2015 was held to be barred by limitation under Section 27(1)(a) of the Tamil Nadu Value Added Tax Act, 2006.

(5) Deepam Steel Vs. CTO Ranipet(SIPCOT) Assessment Circle in W.P.No.34421 of 2013, Order dated

08.01.2018(Mad.): the dispute related to the assessment year 2005-06, the final assessment order was issued on 10.08.2007 and the pre-revision notice issued on 27.03.2013 was held to be barred by limitation under the amended S.16(1)(a) of the TNGST Act.

(6)R.K.B. Roof Vs. Assistant Commissioner(ST) Thiruvannamalai II Assessment Circle in W.P.No.1587 of 2018, Order dated 25.01.2018: this is an interim order.

(7).M/s.Reliance Motor Company Private Ltd Vs. State of Tamil Nadu reported in (1992) 84 STC 201[Mad] (DB): the dispute related to the assessment year 1974-75, the original assessment order was issued on 30.10.1976 and the pre-revision notice dated 21.10.1981, which was issued under S.34 of the TNGST Act was held to be without jurisdiction.

(8)M/s.Mira Sahni and Another Vs. Lieutenant Governor of Delhi & Others reported in [2008] 9 SCC 177 (Del.)(FB): the dispute related to whether a no objection certificate could be treated as a permission under Section 5 of the Delhi Land (Restrictions on Transfer) Act, 1972.

(9)M/s.Suchitra Components Ltd Vs. Commissioner of Central Excise reported in (2009) 20 VST 726(SC): this case related to the interpretation of a circular and it was held that a circular that is beneficial to the assessee could be interpreted retrospectively but not one that is not beneficial.

(10)M/s.P.R.G. Kamaraj Vs. Deputy Commercial Tax Officer, Thiruthuraipoondi Assessment Circle, Thiruthuraipoondi, (2014) 74 VST 368[Mad](DB): the dispute related to the assessment year 2000-01, the original assessment order was issued on 28.12.2001 and the pre-revision notice that was issued on 28.06.2006 was held to be barred by limitation.

(11)M.U.A. Arumugaperumal vs. ACTO (FAC), Srivilliputhur, (2008) 16 VST 188(Mad)(DB): the dispute related to the assessment year 1995-96, the original assessment order was issued on 07.02.1997 and the pre-revision notice that was issued on 14.04.2004 was held to be barred by limitation.

(12) Stanus Amalgamated Estates Limited vs. CTO, Trichy, W.P. No. 3175 of 2006(Mad.)(DB): this dispute related to the assessment year 1999-2000, the original assessment order was issued on 30.03.2001 and the pre-revision notice dated 23.01.2006 was held to be barred by limitation.

8.In response, the learned counsel appearing for the Respondent submitted that the revised assessment proceedings are not barred by limitation because the limitation period as per pre- amended Section 16 had not expired when the amendment came into force on 01.07.2002. In effect, it is the submission of the learned counsel that the amended Section 16 would apply to all surviving causes of action as of the date of entry into force of the amendment. In other words, if the original period of limitation had lapsed as of 01.07.2002, the amendment cannot be applied, and therefore, the proceedings would be barred by limitation. On the other hand, if the cause of action subsisted as of 01.07.2002, the amendment to the method of computation of limitation would apply. In order to substantiate his submission, the learned counsel appearing for the Respondent relied upon the judgments, which are set out below along with the context therein:

(1) The Sales Tax Officer vs. Sudarsanam Iyengar (1969)2 SCC 396: this dispute was in the context of Rule 33 of the Travancore Cochin General Sales Tax Rules, 1950 which required that escaped assessment should be determined within three years and the Supreme Court held that the proceedings would be within limitation if commenced within three years although the revised assessment order is issued after the expiry of three years.

(2) Jeewanlal (1929) Ltd. vs. State of Tamil Nadu (1982) 49 STC 58(Mad.)(DB): this dispute related to the assessment year 1969-1970 in respect of which an original assessment order was issued on 15.03.1971, which was sought to be revised by revision notice dated 11.03.1975 under S.16(1) of the TNGST Act. In this context, the Division Bench held that the time limit under Section 16 relates to the time limit for initiating a proceeding to determine the escaped turnover and not for issuing the final revised assessment order.

(3) Union of India and Others Vs. Uttam Steel Ltd reported in (2015) 13 SCC 209: this case related to an amendment to Section 11 B of the Central Excise Act and the Supreme Court held that the period of limitation is procedural or adjectival law and would ordinarily be retrospective subject to the proviso that the claim should not be time barred when the amendment comes into force.

(4) S.S.Gadgil Vs. Lal and Co., (1964) 8 SCR 72: this dispute related to assessment under the Income Tax Act for the assessment year 1954-55, the issuance of pre-revision notice on 12.03.1957 to revise the assessment and whether the amendment to S.34 would apply to the revision

of assessment. In this context, it was held that the amendment to S.34 would apply if the limitation period under the pre-amended S.34 had not expired on the date of entry into force of the amendment but not if the claim was time barred on that date.

(5)State of Karnataka Vs. Laxman, (2005) 8 SCC 709: this case related to the non-applicability of S.5 of the Limitation Act, 1963 to proceedings under S.18 of the Land Acquisition Act, 1894.

(6)Amrendra Pratap Singh Vs. Tej Bahadur Prajapati and others, (2004) 10 SCC 65: in this case, it was held that a judicial decision is an authority for what it actually decides and not for what can be read into it by implication.

(7) N.K.C. Syed Mohammed Ravoother vs. DCTO, (1958) 9 STC 1(Mad)(DB): this dispute related to assessment under the Madras General Sales Tax Rules, 1939 for the assessment year 1952-53. The original assessment order was issued on 10.02.1954 and, thereafter, a pre-revision notice was issued on 01.01.1956 in respect of escaped assessment under amended Rule 17(1), which came into force on 11.06.1953. In this context, the Division Bench of this Court held that the amended law would apply because the law of limitation is procedural and, consequently, retrospective subject to the rider that it would not apply to rights that are time barred on the date of entry into force of the amendment.

9.With regard to the judgments that were relied upon by the learned counsel for the Petitioner, the learned counsel for the Respondent submitted that the settled proposition that the law of limitation is procedural and that any amendment thereto would apply to all claims that were alive on the date of amendment was not raised in any of these cases. In particular, he submitted that the binding judgments of the Hon'ble Supreme Court and of Division Benches of this Hon'ble Court to the above effect were not submitted for the consideration of the Court when the said orders were issued. With regard to the order in W.P.No.34421 of 2013, he submitted that it is a case under the amended Section 16 and, on the facts of the said case, the proceedings were barred by limitation under the amended Section 16 of the Act. Therefore, he submitted that the said order is not applicable. With regard to the judgment of the Hon'ble Supreme Court, which is reported in (2009) 20 VST 726, he submitted that the said judgment relates to a circular issued by the Central Excise Department and that the principle therein is, therefore, not applicable to a statutory amendment. As regards the judgment which is reported in (2014) 74 VST 368 (Mad), he submitted that the Division Bench did not have the benefit of the judgments of the Hon'ble Supreme Court in cases such as UTTAM STEEL LTD case and that of the Division Bench of this Court in cases such as that reported in (1958) 9 STC 1 and that , therefore, this Court did not consider the proposition that the law of limitation is procedural and is, therefore, applicable retrospectively except when the claim was already barred by limitation as of the date of entry into force of the relevant amendment.

10.In oral submissions by way of rejoinder, the learned counsel for the Petitioner emphasised that the Division Bench of this Court, in the judgment reported in (2014) 74 VST 368 (cited supra) and in the STANUS AMALGAMATED ESTATES LIMITED case (cited supra), held categorically that the amendment to Section 16 of the TNGST Act cannot be applied in cases where the original assessment order was passed before the amended provision came into effect.

11.He also relied upon the Division Bench judgment of this Court, which is reported in (2008)16 VST 188[Mad](cited supra), which is a case under Section 16 of the TNGST Act, and was relied upon in the case reported in (2014) 74 VST 368. In the said case, this Court held as follows:

> “From a bare reading of the provision, it is clear that the amended provisions is not relevant. There is also no dispute that the revision of assessment is barred by limitation period commences from the date of final assessment order. The said provision came into effect prospectively and not retrospectively. There is nothing in the amendment made to Section 16(1)(a) that the same was intended to operate retrospectively. There is no dispute regarding the same. Therefore, the amended provisions is not relevant. There is also no dispute that the revision of assessment is barred by limitation as early as on March 31, 2001, which is much before the introduction of amended provision of Section 16(1)(a) by Amendment Act of 22 of 2002, which came into effect from July 1, 2002....”
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> (em
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> phasis added).

12.With regard to the judgments that were relied upon by the learned counsel for the Respondent, the learned counsel for the Petitioner submitted that the said judgments were not in the context of the TNGST Act. He further submitted that, in the instant case, the amendment changed the procedure for computing limitation and not the period of limitation. Accordingly, he submitted that the amended procedure cannot be applied retrospectively.

13.The affidavit, documents on record, oral submissions and case laws were carefully considered.

14.As regards W.P.Nos.36865 and 36866 of 2006, the pre-revision notices were issued before the expiry of the limitation period under the pre-amended Section 16(1) of the TNGST Act. Therefore, the proceedings for re-assessment, in these two Writ Petitions, were initiated or commenced prior to the expiry of the limitation period under the pre-amended Section 16(1) of the TNGST Act. Consequently, as per the judgment of the Hon'ble Supreme Court in the case reported in (1969) 2 SCC 396 (cited supra) and that of the Division Bench of this Court in the judgment reported in (1982) 49 STC 58,(cited supra) the re-assessment proceedings are within the limitation period even under the pre-amended Section 16(1) of the TNGST Act. In this regard, it may be noted that the Original Assessment Orders in these cases were issued after the amendment came into force.

15.As regards W.P.No.36497 of 2006, the only question that is required to be answered is whether the amendment to Section 16 of the TNGST Act, which came into force on 01.07.2002, can be applied to the re-assessment proceedings in this Writ Petition. In this regard, it is relevant to bear in mind that limitation is an aspect of public policy and that limitation does not extinguish rights but merely bars the remedy. In Bombay Dyeing and Manufacturing Co. Ltd. vs. The State of Bombay, 1958 SCR 1122, the Hon'ble Supreme Court held as follows:

> “Now it is well settled in the law of this country that the statute of limitation only bars the remedy but does not extinguish the debt”

16.The Hon'ble Supreme Court in cases such as UTTAM STEEL LTD (cited supra), which is a decision in the context of Section 11 B of the Central Excise Act 1944, in paragraph 10 of the said judgment, inter alia, held as follows:

"....There is no doubt whatsoever that a period of limitation being procedural or adjectival law would ordinarily be retrospective in nature. This, however, is with one proviso super added which is that the claim made under the amended provision should not itself have been a dead claim in the sense that it was time-barred before an amending Act with a larger period of limitation comes into force...."

17.In the said UTTAM STEEL LTD judgment, the Hon'ble Supreme Court referred to several other judgments of the Hon'ble Supreme Court such as the case reported in AIR 1965 SC 171 (cited supra); (2) ITO Vs. INDUPRASAD DEVSHANKER BHATT AIR 1969 778; (3) NEW INDIA INSURANCE CO. LTD. vs. SHANTI MISRA (1975) 2 SCC 846; (4) T.KALIAMURTHI vs. FIVE GORI THAIKKAL WAKF (2008) 9 SCC 306; and (5)THIRUMALAI CHEMICALS LTD vs. UNION OF INDIA (2011) 6 SCC 739.

18.Similarly, the Division Bench of this Hon'ble Court in the case reported in (1958) 9 STC 1 (cited supra) held as follows:

"The contention of the learned counsel for the petitioner was that the period of limitation should be only two years, which was all that Rule 17 (1) provided for as it stood on 31 March 1953, at the close of the relevant year of assessment 1952-1953. Had Rule 17 (1) not been amended, the assessment of escaped turnover would have had to be completed before 31st March, 1955. But before the expiry of that period the rule prescribing the period of limitation was amended, giving the assessing authority three years within which to assess any turnover that had escaped assessment. It was the three-year period that should apply to the case of the petitioner. His contention that he had acquired a vested right to the two-year period of limitation is untenable.

In Mohammed Hussain Nachiar v. Commissioner of Income-tax, Madras (1956) 2 MLJ 139, we pointed out that the principle to apply in such cases was the one laid down by another Division Bench of this court in Ramanathan Chettiar v. Kandappa Gounder (1950) 2 MLJ 624, where the learned Chief Justice observed: "it is well settled that the law of limitation being procedural law its provisions operate retrospectively in the sense that they apply to causes of action which arose before the enactment and that it is equally well-established that if a right to sue had become barred by the provisions of the act then in force on the date of coming into force of a later enactment, then such a barred right is not revived by the application of the new enactment".

In this case, before the right of the assessing authority was barred, the period of limitation prescribed by law was enlarged, and it was the amended law that determined the liability of the petitioner."

19.As regards the cases that were relied upon by the learned counsel for the Petitioner, the judgments in W.P. No.15137 of 2004, (2012) 47 VST 20, W.P.No.34421 of 2013, (2008) 16 VST 188 (all cited supra) are cases wherein the re-assessment proceedings would be barred even under the amended Section 16(1) of the TNGST Act. The decisions in (2004) 74 VST 368 and the Stanus Amalgamated Estates case are the only exceptions and both rely on and follow (2008) 16 VST 188, wherein, as stated above, the re-assessment proceedings were barred under the amended Section 16(1) also. More importantly, the binding judgments of the Supreme Court, which are cited in Uttam Steel and the Division Bench judgments of this Court in (1958) 9 STC 1, (1956) 2 MLJ 139 and (1950) 2 MLJ 624 were not cited and the principle that the law of limitation is procedural and, therefore, ordinarily, retrospective was not canvassed and, therefore, not considered.

20.The principles that can be gleaned from the above mentioned judgments of the Supreme Court and the Division Bench of this Court are as follows:

(a) Substantive law deals with rights, obligations and liabilities whereas procedural law deals with the enforcement thereof.

(b) The law of limitation is largely procedural and, therefore, ordinarily operates retrospectively.

(c) The above principle is subject to the caveat that the claim should not have become barred under the pre-amended law on the date of entry into force of the amendment to the limitation provision.

(d)Once the claim is barred under the then applicable law of limitation, a vested right is created in favour of the person resisting the legal action not to be prosecuted in legal proceedings. Consequently, the law of limitation acquires a substantive dimension in such circumstances. In this regard, as held in the case reported in (1958) 9 STC 1, there is no vested right until the original period of limitation expires.

(e) Likewise, when the limitation period is curtailed by an amendment, it cannot defeat the vested substantive right of a person to sue as of the date of the amendment. In this connection, the judgment of the Supreme Court in New India Insurance Co Ltd vs. Shanti Misra (1975) 2 SCC 840 is relevant, where it was held: "... The new law of limitation providing a longer period cannot revive a dead remedy. Nor can it suddenly extinguish vested right of action by providing for a shorter period of limitation."

21.If the facts of this case are analysed in light of the law laid down in the above binding and authoritative cases, it is clear that the amendment would apply to the re-assessment proceedings because the limitation period under the pre-amended Section 16 expired on 31.03.2005 in W.P.No.36497 of 2006, whereas the amendment came into effect on 01.07.2002. As regards W.P.Nos. 36865 and 36866 of 2006, as stated earlier, the re-assessment proceedings were within the period of limitation under the pre-amended Section 16(1). Even otherwise, in view of the above conclusion regarding the applicability of the amendment, the re-assessment proceedings are not barred by limitation.

22.In the result, these Writ Petitions are dismissed but there shall be no order as to costs. Consequently, connect M.Ps. are closed.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

rrg

To

The Commercial Tax Officer,
Anna Salai III Assessment Circle,
Chennai.

+2cc to Mr.C.Baktha Siromani, Advocate SR.No.42317, 42318

+1cc to Special Government Pleader(Taxes) SR.No.43035

W.P.Nos.36497, 36865 and
36866 of 2006

KK(CO)
GMY(19/06/2019)