IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 05.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.Nos.6815 & 6816 of 2012
and M.P.Nos.1 & 1 of 2012

Tvl.Mayajal Entertainment Ltd.,
Represented by its Managing Director,
Mr.Udeep Bogollu,
No.34/1, ECR, Kanathur Reddy,
Kuppam Village,
Chennai-603 112. ...Petitioner in both petitions

Vs.

The Assistant Commissioner (CT),
Chengalpattu Assessment Circle,
No.26/35, Alagesan Street,
Vedachala Nagar,
Chengalpattu. ...Respondent in both petitions

Common Prayer:

Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records pertaining to the impugned notice dated 24.02.2012 in Amusement No.001/2003-04 and Amusement No.001/2004-05 relating to Assessment Years 2003-2004 and 2004-2005 respectively, on the file of the respondent and quash the same.

For Petitioner : Mr.R.G.Muthukumaran

For Respondent : Mr.V.Haribabu
Additional Government Pleader



COMMON ORDER

These writ petitions have been filed seeking to set aside the impugned notice dated 24.02.2012 in Amusement No.001/2003-04 and Amusement No.001/2004-05 relating to Assessment Years 2003-2004 and 2004-2005 respectively, on the file of the respondent and quash the same.

2. The ground raised by the petitioner in these writ petitions is that, though the first notice issued under Section

7-B of the Tamil Nadu Entertainment Tax Act, 1939, was within the period of five years from the end of the respective assessment years, the process of re-assessment itself should have been completed within the period of five years as prescribed under Rule 43-E (1) of the Tamil Nadu Entertainment Tax Rules, 1939. On this proposition, the learned counsel for the petitioner relied upon the decision of the Apex Court in the case of Kalyankumar Ray Vs. CIT[1]. The learned counsel petitioner further submitted that the term "re-assessment" should be construed to the effect that the entire re-assessment proceedings should be concluded within the prescribed period of five years.

3. The learned Additional Government Pleader opposed such submission by relying upon the decision of the Apex Court in the case of the Sales Tax Officer and another Vs. Messrs Sudarsanam Iyengar and Sons[2]. He submitted that the term "assessment" referred to under Section 7-B of the Act r/w Rule 43-E(1) of the Rules does not mean final order of assessment alone and initiation of the re-assessment proceedings through the notices dated 22.08.2008 and 21.08.2008 for the assessment years 2003-2004 and 2004 to 2005 respectively, is sufficient to hold that the proceedings have been initiated within the prescribed period of five years.

4. The decision relied upon by the learned counsel for the petitioner is one arising under the Income Tax Act for the purpose of determining the scope of Section 143 (3) of the Income Tax Act for making an assessment of the total income or loss of the assessee and determination of the sum payable by him on basis of such assessment. The Supreme Court had held that the Department has to determine, by an order in writing, not only the total income but also the net sum which will be payable by the assessee. It is in this background that the assessment proceedings was described as comprehensive assessment order, whereas, in the decision cited by the learned Additional Government Pleader, in the case of Messrs Sudarsanam Iyengar (supra), the matter arose under the Sales Tax Act and while holding that the term “assessment” will denote the entirety of proceedings which are taken with regard to such assessment, the Apex Court has held as follows:

> “4.......Now in view of the previous decisions the principle is firmly established that assessment proceedings under the Sales-Tax Act must be held to be pending from the



1 (1992) 102 CTR 188

2 1969 (2) SCC 396

time the proceedings are initiated until they are terminated by a final order of assessment. The distinguishing feature on which emphasis has been laid by the counsel for the respondent is that the language employed in Rule 33 is such as to lead to only one conclusion that the final determination of the turnover which has escaped assessment and the assessment of the tax have to be done within three years. It is pointed out that in the other Sales-Tax provisions which came up for consideration in the cases mentioned above the words employed were "proceed to assess" e.g., sub-sections (4) and (5) of Section 11 of the Punjab General Sales Tax Act. Our attention has been invited to the appropriate dictionary meaning of the word "determine" which is "to settle or decide-to come to a judicial decision" (Shorter Oxford English Dictionary). It is suggested that the word "determine" was employed in Rule 33 with a definite intention to set the limit within which the final order in the matter of assessment should be made, the limit being three years. We find it difficult to accept that in th context of sales tax legislation the use of the words "proceed to assess" and "determine" would lead to different consequences or result. In this connection the words which follow the words "determine" in rule 33 must be accorded their due signification. Te words "assess the tax payable" cannot be ignored and it is clearly meant that the assessment has to be made within the period prescribed. Assessment is a comprehensive word and can denote the entirety of proceedings which are taken with regard to it. It cannot and does not mean a final order of assessment alone unless there is something in the context of a particular provision which compels such a meaning being attributed to it. In our judgment despite the phraseology employed in Rule 33 the principle which has been laid in other cases relating to analogous provisions in sales-tax statute must be followed as otherwise the purpose of a provision like Rule 33 can be completely defeated by taking certain collateral proceedings and obtaining a stay order as was done in the present case or by unduly delaying assessment proceedings beyond a period of three years.

> 5. It is undoubtedly open to the legislature or the rule making authority to make its intention quite clear that on the expiry of a specified period order of assessment can be made. Then the taxing authorities would certainly debarred from completing the assessment beyond the period prescribed as was the case in sub-section (3) of Section 34 of the Income Tax Act 1922; but such is not the case here and we would hold that the assessment proceedings relating to the year 1962-63 were within time."

5. The aforesaid extract is self-explanatory, in the sense that the term "re-assessment" referred to under Section 43-E (1) of the Act, cannot mean to be a final order of assessment and that a mere issuance of a notice for the re-assessment would constitute the process of re-assessment having been initiated, from which point of time, the limitation prescribed under the section requires to be construed.

6. In the present case pertaining to the Assessment years 2003-2004 and 2004-2005, notices of re-assessment have been issued within the period of five years from the end of the respective assessment years and as such, I do not find any infirmity on the authority of the respondent in having issued these notices. Since the present impugned notices have only called upon the petitioner to give his objections to the proposed difference of taxes, it would be appropriate to grant liberty to the petitioner to submit his objections before the respondent herein in consequence to their impugned notices issued.

In the light of the above observations, these writ petitions stand closed with liberty to the petitioner to submit his objections to the proposed levy of taxes under the impugned notices dated 22.08.2008 and 21.08.2008 for the assessment years 2003-2004 and 2004-2005 respectively, within a period of fifteen days from the date of receipt of a copy of this order.



Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

nsd

To

The Assistant Commissioner (CT),
Chengalpattu Assessment Circle,
No.26/35, Alagesan Street,
Vedachala Nagar, Chengalpattu.

+1cc to Mr.R.G.Muthukumaran, Advocate sr.66845(12/11/2019)

W.P.Nos.6815 & 6816 of 2012

KS(CO)
CS/23/09/2019