IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.06.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.Nos.17059 and 17060 of 2019
and W.M.P.Nos.16615, 16616, 16617 and 16618 of 2019

Tvl.Vikas Submersible Spares
Represented by its Proprietrix
Smt.Rakhee Nikesh Parekh .. Petitioner in both W.Ps.

vs.

The Assistant Commissioner (CT)
P.N.Palayam Assessment Circle
Coimbatore. .. Respondent in both W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records on the files of the respondent in TIN:33672163017/2010-11 and TIN:33672163017/2011-12 respectively dated 14.02.2019 and connected proceeding dated 14.05.2019 and quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice and beyond the prescribed period of limitation of five years and to pass such other orders as the Hon'ble Court may deem fit and appropriate in the facts and circumstances of the case and thus render justice.

For Petitioner : Mr.R.Senniappan
(In both W.Ps)
For Respondent : Mr.M.Hariharan
(In both W.Ps) Additional Government Pleader.

COMMON ORDER

Mr.R.Senniappan, learned counsel on record for writ petitioner in both these writ petitions is before this Court. Mr.M.Hariharan, learned 'Additional Government Pleader' ('AGP' for brevity) accepts notice on behalf of sole respondent in both these writ petitions..

2. With consent of learned counsel on both sides, main writ petitions itself are taken up and are being disposed of.

3. This common order will dispose of both these writ petitions.

4. Short facts shorn of elaboration, details and particulars or in other words, factual matrix in a nutshell which is imperative for appreciating this order is as follows:

> a) Writ petitioner is a dealer registered with the authorities concerned under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)' (' TNVAT Act' for brevity).
>
> b) These two writ petitions pertain to financial years 2010-11 and 2011-12 (hereinafter 'said FYs' for brevity)
>
> c) Writ petitioner was filed monthly returns and there was deemed assessment inter alia under Section 22(2) of TNVAT Act.
>
> d) Under such circumstances, respondent has issued Revised Assessment Orders dated 14.05.2019 bearing reference TIN:33672163017/2010-11 and TIN:33672163017/2011-12. To be noted, both the revised assessment orders are dated 14.05.2019. These two 'Revised Assessment Orders' shall collectively be referred to as 'impugned orders' and shall be referred to as 'impugned order' in singular.
>
> e) Complaining that impugned orders are barred by limitation, instant writ petitions have been filed.

5. Notwithstanding the various averments and grounds in the affidavits filed in support of the writ petitions, in the hearing, learned counsel for writ petitioner submitted that the sole and pivotal submission, on which impugned orders are assailed, is that they are barred by limitation. For this purpose, learned counsel drew the attention of this Court to Section 27(1)(b) of TNVAT Act, which reads as follows:

> '27.Assessment of escaped turnover and wrong availment of input tax credit:
>
> (1) (a)....
>
> (b) Where, for any reason, the whole or any part of the turnover of business of a dealer has been

assessed at a rate lower than the rate at which it is assessable, the assessing authority may, at any time within a period of six years from the date of assessment, re-assess the tax due after making such enquiry as it may consider necessary.'

6. With regard to the expression 'six years from the date of assessment' occurring in Section 27(1)(b) of TNVAT Act, it was submitted that the said amendment came into force on 19.06.2019.

7. Learned counsel for writ petitioner submitted that with regard to said FYs, i.e., two financial years i.e., 2010-11 and 2011-12 deemed assessment happened on 30.06.2011 and 31.10.2012.

8. Upto this point, there is no disputation on facts before this Court.

9. Under the aforesaid undisputed factual scenario, learned counsel for writ petitioner pointed out that the six years period contemplated under Section 27(1)(b) of TNVAT Act elapsed on 29.06.2017/30.10.2018 and therefore, impugned orders issued on 14.05.2019 are clearly barred by limitation.

10. Under the normal circumstances, limitation is a mixed question of fact and law, but in the instant case, as would be evident from the narrative thus far from the undisputed facts, there is no disputation that deemed assessment inter alia under Section 22(2) of TNVAT Act for said FYs happened on 30.06.2011 and 31.10.2012. It is also not in dispute that upto the financial year 2010-11, deemed assessment was on 30th June and thereafter it became 31st of October.

11. In the light of disputed facts in the instant case, limitation turns solely on 27(1)(b) of TNVAT Act.

12. All that have been alluded to supra, leads this Court to the inevitable sequitur that impugned orders are barred by limitation, having been issued more than six years from the date of assessment. To be precise, dates of assessment are 30.06.2011 for financial years 2010-11 and 31.10.2012 for 2011-12. However, impugned orders have been passed only on 14.05.2019.

13. The indisputable sequitur that follows is that the impugned orders are liable to be set aside as barred by limitation. To be noted, impugned orders are set aside, solely on the ground of being barred by limitation and this Court has not gone into the merits of the matter and no opinion or view has been expressed by this Court on merits of the matter.

14. Both the writ petitions are allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

vsm

To

The Assistant Commissioner (CT)
P.N.Palayam Assessment Circle
Coimbatore.

+1cc to Mr.R.Senniappan, Advocate SR.No.51632

+1cc to Special Government Pleader SR.No.52483

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6617 and 16618 of 2019

RSV(CO)
GMY(22/07/2019)