

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 29.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.Nos.20925, 20930, 20932 & 20935 of 2019

and

W.M.P.Nos.20114, 20118, 20120 & 20122 of 2019

Tvl.Victus Dyeings

Represented by its Partner

A.Loganathan

... Petitioner in all W.Ps.

Vs.

The Assistant Commissioner (ST)

Rural Assessment Circle

Tirupur.

.. Respondent in all W.Ps.

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records on the file of the respondent in TIN:33962384066/2007-08, TIN:33962384066/2008-09, TIN:33962384066/2009-10 and TIN:33962384066/2010-11 dated 30.05.2019 and quash the same as being without jurisdiction, authority of law and beyond the prescribed period of limitation of six years and issue such further writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and render justice.

For Petitioner : Mr.R.Senniappan

(In all W.Ps)

For Respondent : Mr.Mohammed Shaffiq

(In all W.Ps)

Special Government Pleader (Taxes)

COMMON ORDER

Mr.R.Chenniappan, learned counsel on record for writ petitioner in all these four writ petitions and Mr.Mohammed Shaffiq, learned 'Special Government Pleader' ('SGP' for brevity) on behalf of sole respondent in all these four writ petitions are before this Court.

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

3. Subject matter of these writ petitions arise 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. This Court is informed that these writ petitions arise out of a common factual matrix and only the assessment orders in these four writ petitions are different. The four assessment years covered by these four writ petitions are 2007-08, 2008-09, 2009-10 and 2010-11. As the Assessment Years are different, obviously numerical values are also different.

4. In the previous hearing, on 22.07.2019, 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:

2. Central theme of these four writ petitions or in other words, the core issue is limitation.

3. In these four writ petitions, which arise under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)' hereinafter be referred to as 'TNVAT Act' for brevity, the Assessment Years, which form subject matter of these four writ petitions are 2007-08, 2008-09, 2009-10 and 2010-11.

4. Owing to proviso to Section 22(2) of TNVAT Act, deemed assessment date for all these four Assessment Years is 30.06.2012 (30th day of June 2012). There is no dispute or disagreement in this regard.

5. Revisional notice was issued with regard to these four Assessment Years on 27.09.2018 and revised Assessment Orders came to be passed on 30.05.2019. There is no dispute or disagreement in this regard also.

6. In the light of the aforesaid undisputed factual setting, learned counsel for writ petitioner submits that the impugned revised Assessment Orders qua these four Assessment Years are barred by limitation owing to Sections 27(1)(a) and 27(1)(b) of TNVAT Act. To be noted, there is no dispute or disagreement that impugned orders have been made under Section 27 of TNVAT Act. Also to be noted, under Sections 27(1)(a) and 27(1)(b), the limitation prescribed is six years from the date of assessment and this amendment to said provisions kicked in on 19.06.2012.

7. Learned counsel for Revenue i.e., State Counsel submitted that inspection of business premises of writ petitioner with regard to these four Assessment Years was on 16.12.2016 and the proposals, pursuant to such inspection, are dated 16.04.2018. Placing reliance on the dates of inspection and inspection/proposal reports i.e.,

16.12.2016 and 16.04.2018, learned State Counsel submitted that it may well be possible to construe that impugned revised Assessment Orders though under Section 27 of TNVAT Act are not barred by six years limitation period.

8. To be noted, this proceedings have been recorded for the purpose of narrowing down the issues in the ensuing listing which shall be on 29.07.2019.

List this matter on 29.07.2019 in the 'Motion List'.'

5. Thereafter, instant writ petitions are listed today.

6. Continuing from the previous hearing, learned counsel before this Court submitted that the issue, which needs to be resolved in the instant writ petition is whether the inspection by the Enforcement Wing on 16.12.2016 and the report given by the Enforcement Wing being report dated 16.04.2018 will save limitation for the Revenue. To be noted, admittedly, the revisional notice is dated 27.09.2018 and the impugned revised assessment orders are dated 30.05.2019 both of which are after 30.06.2018, which is admittedly the date on which six years from the date of assessment elapsed. As would be evident from the earlier proceedings, date of assessment is 30.06.2012 in all these four cases and therefore, six years therefrom elapsed on 30.06.2018.

7. For the purpose of clarity and for the purpose of stating with specificity, while inspection by the Enforcement Wing on 16.12.2016 and the report given by the Enforcement Wing on 16.04.2018 are prior to 30.06.2018, the revisional notice on 27.09.2018 and the impugned revised assessment order on 30.05.2019 are after the date on which six years limitation period elapsed.

8. Today, the SGP/learned Revenue Counsel i.e., State Counsel contended that assessment is a continuing process and inspection by the Enforcement Wing on 16.12.2016, and the report given by the Enforcement Wing on 16.04.2018 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 revisional notice and date of impugned orders i.e., 27.09.2018 and 30.05.2019 are taken, the impugned orders are barred by six years. Saying so, learned SGP wanted this Court to construe dates of inspection/report of/given by Enforcement Wing as reckoning dates to arrive at dates on which limitation stood arrested.

9. Therefore, the neat question, which falls for consideration in these four writ petitions is whether inspection by the Enforcement Wing Official on 16.12.2016 and the report given by the Enforcement Wing Official on 16.04.2018 can be construed as 'determination' by adopting best judgment method within the meaning of Section 27(1)(a) of TNVAT Act. To be noted, all these cases fall 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 dispute that initiation of assessment is qua the dealer and that happened only on 27.09.2018. 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 16.04.2018 cannot be construed as initiation of assessment qua the writ petitioner dealer. Writ petitioner dealer would not know the fate of the inspection on 16.12.2016 and the report on 16.04.2018, as it is for the respondent to decide whether to issue revisional notice and proceed with the assessment or not and that the respondent has decided to proceed with the revised assessment under Section 27 of TNVAT Act was communicated to the writ petitioner only on 27.09.2018. Therefore, 'determine' as occurring in Section 27(1)(a) of TNVAT Act is necessarily determination qua the writ petitioner dealer and assessment also should be qua 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 protagonist a theory that 'Enforcement Wing Officer' should be construed as 'Assessing Officer'.

16. 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 the revisional notice, but even post revisional notice while making the revised assessment order this does not carry the Revenue any further.

17. 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.

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.

"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)'

18. 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 in 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 27.09.2018, when the revisional notice was issued. Therefore, taking the date of revisional notice as the reckoning date, it is clearly after six years from the date of assessment had elapsed. This Court hastens to add that, to test with exactitude, the date of service of revisional notice on writ petitioner is relevant. In cases on hand the exact date of service has not been set out in the case file, 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 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.

19. 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 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.

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.'

20. 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 revisional notice i.e., 27.09.2018.

21. Owing to all that have been set out supra, this Court has no difficulty in coming to the conclusion that impugned assessment orders which are admittedly under Section 27(1)(a) of TNVAT Act, are barred by limitation as contained in the very provision under which the revised assessments have 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 assessment.

22. 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.

23. Impugned assessment orders are set aside and the writ petitions are allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (ST)
Rural Assessment Circle
Tirupur.

+1cc to Mr.R.Senniappan, Advocate Sr.No.64770
+1cc to The Special Government Pleader SR.No.65016

AKM/14.09.19 /8P-4C/

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