IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2019

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.NO.25186 OF 2019
AND WMP NO.24759 OF 2019

M/s.Indian Commerce Industries Co.
Pvt. Limited
Rep. by its Director Mr.Ramesh C Kumar
No.57, Prakasam Salai, Broadway
Chennai - 600 001.
... Petitioner

vs.

The Assistant Commissioner (ST)
Muthailpet Assessment Circle
No.199m 2nd Floor, Thambu Chetty Street
Chennai - 600 001.
... Respondent

PRAYER:
Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the respondent in TIN/33141240014/2010-11 dated 24.07.2019, quash the same as without jurisdiction and pass such further order or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and render justice.

For Petitioner : Mr.V.Sundareswaran

For Respondent : Ms.G.Dhanamadhri, Government Advocate

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O R D E R

Mr.V.Sundareswaran, learned counsel on record for writ petitioner and Ms.G.Dhanamadhri, learned Government Advocate, who accepts notice on behalf of the sole respondent 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.

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3. Considering the narrow compass on which instant writ petition now turns, short facts shorn of elaboration will suffice. Subject matter of instant 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 brevity. Short facts are that writ petitioner is a dealer under TNVAT Act, that the writ petitioner is filing monthly returns under Section 21 of TNVAT Act, that there was deemed assessment under Section 22(2) of TNVAT Act, that first revisional notice dated 26.09.2017 was issued, that writ petitioner dealer sent a reply to this revisional notice being reply dated 12.10.2017, that the respondent passed a revisied assessment order dated 03.11.2017, that thereafter the respondent noticed that ITC reversal under Section 19(4) of TNVAT Act had not been discussed with regard to stock transfer sales in the revised assessment order dated 03.11.2017, that therefore, the respondent issued a second revisional notice dated 10.06.2019, that the writ petitioner dealer responded to the second revisional notice by way of objection dated 20.06.2019 in which limitation issue was also raised and that post second revisional notice dated 10.06.2019 and writ petitioner dealer's reply dated 20.06.2019, the respondent passed a revised assessment order dated 24.07.2019, bearing Reference No.TIN/33141240014/2010-11 ('impugned order' for brevity), which has been called in question.

4. The impugned order does not mention the provision of law under which it has been made, but at the hearing, this Court is informed that the impugned order is primarily under sub-sections (1) and (2) of Section 27 of TNVAT Act. In any event, there is no disputation or disagreement that impugned order is only under Section 27 of TNVAT Act.

5. In the aforesaid backdrop, notwithstanding very many averments in the affidavit filed in support of the writ petition and very many grounds raised/contentions canvassed in the affidavit filed in support of the writ petition, learned counsel for writ petitioner, projected his argument assailing the impugned order on one pivotal point and that one pivotal point is limitation.

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6. There is no disputation or disagreement that the impugned order pertains to Assessment Year 2010-11. Adverting to proviso to Section 22(2) of TNVAT Act, it was submitted that deemed assessment for said Assessment Year qua impugned order was on 30.06.2012. Adverting to sub-Clauses (a) and (b) of sub-Section (1) of Section 27 of TNVAT Act, it was submitted that limitation for making the impugned order is six years and that the same elapsed on 29.06.2018. To be noted, there is no

disputation or disagreement on this aspect of the matter.

7. Furthering his arguments on limitation, it was submitted by learned counsel for writ petitioner that the second revisional notice is clearly after expiry of the period of limitation and is therefore, time barred. It was submitted as a sequitur that the impugned order is time barred.

8. Responding to the aforesaid submission, learned Revenue Counsel pointed out that the first revisional notice is dated 26.09.2017 and after obtaining the reply from the writ petitioner dealer, the revised assessment order itself has been made on 03.11.2017, which is within the prescribed six years period. Furthering her submission in this direction, learned Revenue Counsel pointed out that the issue dealt with in the second revisional notice is not a new or fresh issue, but is only an issue which has already been covered by 26.09.2017 first revisional notice and therefore, it cannot be gainsaid that the impugned order is time barred.

9. This Court has carefully examined the rival submissions. The arguments advanced by learned Revenue Counsel, may have become acceptable if the first revisional noticed dated 26.09.2017 had not culminated in a revised assessment order after obtaining objections from the writ petitioner dealer. The fundamental and cardinal principle in limitation is that the remedy is barred, but the right is not extinguished. If the rival pleas are tested using this cardinal principle as touchstone, it emerges clearly that if the rights to revise the assessment order is construed as a statutory right under TNVAT Act, the rights do not get extinguished, but the proceedings cannot be commenced after the period of limitation. On this principle, this Court is left with the considered view that it would be appropriate to set aside the impugned order, but direct the respondent to redo the revised assessment based on the first revisional notice without adding any material or without adding new points to the same.

10. In other words, it would be appropriate to direct the first respondent to redo the revised assessment under Section 27 of TNVAT Act for the Assessment Year 2010-11 based on the first revisional notice dated 26.09.2017 and the dealer's reply dated 12.10.2017 by perambulating within the four corners of the same.

11. In the light of the discussion/dispositive reasoning thus far, the following order is passed :

a) impugned order being order dated 24.07.2019 bearing Reference

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No.TIN/33141240014/2010-11 made by the sole respondent is set aside. It is made clear that impugned order is set aside solely for the purpose of enabling the revised assessment being redone on the basis of first revisional notice dated 26.09.2017 and writ petitioner dealer's reply dated 12.10.217. In other words, it is made clear that no view or opinion is expressed by this Court on the merits of the matter.

b) Sole respondent is directed to redo the second revised assessment order (to be noted, impugned order is the second revised assessment order, 03.11.2017 being the first revised assessment order) on the merits of the writ petitioner dealer's reply dated 12.10.2017 to the first revisional notice dated 26.09.2017 by perambulating within the same or in other words, without adding or subtracting any new points.

c) The aforesaid exercise of redoing the second revised assessment order (which has now been set aside) shall be completed as expeditiously as possible and in any event within 12 weeks from the date of receipt of a copy of this order.

d) The revised assessment order redone in the aforesaid manner shall be communicated to the writ petitioner dealer under due acknowledgement in accordance with the rules in this regard under the TNVAT Act.

Writ petition is disposed of with the above directions. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsm

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To

The Assistant Commissioner (ST)
Muthailpet Assessment Circle
No.199m 2nd Floor, Thambu Chetty Street
Chennai - 600 001.

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.75192
+1cc to the Special Government Pleader, S.R.No.75800

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RSI(CO)
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