IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.09.2019

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THE HONOURNABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.31431, 31433, 31434 of 2018
and
W.M.P.Nos.36622, 36625 & 36626 of 2018

M/s.Chhotabhai Retailing India P.Ltd.,
represented by its Director,
No.140, Nungambakkam High Road,
Chennai - 600 034. ...Petitioner in all the W.Ps

Vs.

The Assistant Commissioner (ST)
Nungambakkam Assessment Circle,
Chennai - 600 031. ...Respondent in all the W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the respondent in his proceedings in TIN:33620461519/2008-09, TIN:33620461519/2009-10, TIN:33620461519/2010-11 and quash the assessment order dated 28.09.2018 passed therein.

For Petitioner : Mr.P.V.Sudakar

For Respondent : Mrs.G.Dhana Madhri
Government Advocate (Tax)

COMMON ORDER

These three writ petitions are filed challenging the order revising the assessment in respect of assessment years 2008-09, 2009-10 & 2010-11 dated 28.09.2018.

2. Heard both sides.

3. The case of the petitioner in short is as follows:

The petitioner is a registered dealer. In respect of the assessment years 2008-09 to 2010-11, they filed their monthly returns under the Tamil Nadu VAT Act and remitted appropriate taxes. As per section 22(2) of the Tamil Nadu VAT Act, the original assessment of a dealer is deemed to have been assessed where the returns are filed and tax paid are accepted and thus, the dealer is deemed to be assessed on 31st day of October of the succeeding year. The Amendment Act further provides that in respect of assessment year 2006-07 to 2010-11, for which, the assessment orders have not been passed, the assessments shall deemed to have been completed on 30.06.2012. Therefore, the petitioner's original assessment for the assessment years 2008-09, 2009-10, 2010-11 are deemed to have been completed on 30.06.2012. The escaped turn over, if any, and wrong availment of Input Tax Credit however, can be taken into account and assessment may be revised within a period of six years from the date of assessment. However, in this case, the notice of proposal of revision itself was issued to the petitioner on 03.09.2018 for all the above three years, which is undoubtedly, beyond the period of six years. The petitioners filed their reply dated 19.09.2018 and objected to the proposal. However, the Assessing Officer passed the impugned order of assessment in all the three cases, thereby revising the assessment.

4. A counter affidavit is filed by the respondent wherein it is stated that during inspection i.e., on 23.07.2012 to 06.07.2012, the dealers have paid the differences of tax before the Enforcement Wing Officials. In order to regularise the payments made before the Enforcement Wing Officials, the impugned orders were passed and therefore, the impugned orders are not time barred. It is also stated by the respondent that the assessment proceedings were initiated long back i.e., 23.07.2012 itself, which is within the time limit.

5. Learned counsel for the petitioner, after inviting this Court to the relevant provisions, namely Section 27 of the Tamil Nadu VAT Act, submitted that the very notice for revision of assessment having been issued after a period of six years would make the entire assessment vitiated on the ground of limitation. He further contended that the reckoning date for considering the period of limitation is the date of issuance of revision notice and not the date of either inspection or payment of tax before the inspecting officials. In support of such contention, the learned counsel relied on the recent decision made by this Court in W.P.No.20925/2019 dated 29.07.2019.

6. The learned Government Advocate fairly admitted the position that the revision notice itself was issued on 03.09.2018 i.e., beyond the period of six years as required under section 27 of the Tamil Nadu VAT Act.

7. On hearing both sides and considering the facts and circumstances of the present case, it is evident that the Assessing Officer sought to revise the assessment in respect of the relevant assessment years 2008-09, 2009-10 & 2010-11, to which, the deemed assessment has already been taken place and completed on 30.06.2012. Therefore, if the Assessing Officer intends to revise the assessment based on a reason that the turn over has escaped assessment or that the assessee has wrongly

availed the Input Tax Credit, he ought to have proceeded within the time prescribed under the above said provision of law, namely section 27 of the Tamil Nadu VAT Act. In this case, admittedly notice of revision itself was issued on 03.09.2018, beyond the period of six years.

8. Though the respondents sought to contend that the inspection was conducted on 23.07.2012 to 26.07.2012, on which date, the assessee had also paid the tax and therefore, the proceedings for revision of the assessment should deemed to have commenced from that date onwards, this Court is not in a position to accept the above contention, especially, when it is clearly contemplated under section 27(1)(a) of the Tamilnadu VAT Act, 2006 that the Assessing Officer may at any time within a period of six years from the date of assessment determine to the best of its judgment, the turn over which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary.

9. Therefore, it is evident that conducting an inspection or collecting the tax on that day itself cannot be construed as the completion of the exercise of determination to the best of the assessing authorities judgment to the turn over which has escaped assessment and assessment of the tax payable by the assessee on such turnover. In other words, such exercise of determination and assessment referred to under section 27(1)(a) by way of revision would be construed to have commenced only from the issuance of notice of proposal. If the notice of proposal itself is issued beyond the period of six years, certainly, consequential assessment orders, as has been issued in this case, are also barred by limitation and thus, the same cannot be sustained. It is to be noted at this juncture that in a recent decision of this Court, the learned Judge at paragraph Nos.17, 18, 19, 20 and 21 has observed in similar line as follows:

> 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:
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> > '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 yo 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 'determine' 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 'determine' 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.

10. In view of the above stated factual and legal position, all these writ petitions are allowed and the impugned orders of assessment are set aside solely on the ground that they are barred by limitation. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vsi

To

The Assistant Commissioner (ST)
Nungambakkam Assessment Circle,
Chennai - 600 031.

+1 cc to M/s.Special Government Pleader sr77343
+1 cc to M/s.P.V.Sudakar advocate sr77008

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