BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.04.2019
CORAM:
THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**
W.P.(MD)No.5104 of 2019
and
W.M.P.(MD)No.4067 of 2019

S.Dhanalakshmi : Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The Assistant Commissioner (CT),
South Avani Moola Street Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai, Madurai 625 020. : Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to the impugned demand notice of the 2nd respondent Va.Vi.No.33114840428/2008-09, dated 19.12.2018 and quash the same.

For Petitioner : Mr.B.Rooban
For Respondents : Mr.M.Jeyakumar, Additional Government Pleader

ORDER

The instant Writ Petition has been filed challenging the demand notice dated 19.12.2018, issued by the second respondent in Va.Vi.No.33114840428/2008-09.

2.It is the case of the petitioner that the petitioner's husband M.Sethuramalingam, was a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 (herein after referred to as 'the TNVAT Act, 2006'). According the petitioner, he had been regularly filing his monthly returns and the same has also been accepted by the respondents under Section 22 (2) of the TNVAT Act, 2006.

3.The second respondent proposed to revise the earlier assessment by the pre- revision notice dated 27.04.2018. According to the petitioner, her husband died on 05.06.2017, but, the pre-revision notice dated 27.04.2018, proposing to revise the assessment for the year 2008-09 was sent to the petitioner's husband, who was already dead by then. Thereafter, according to the petitioner, without affording sufficient opportunity to raise objections by the legal heirs of the deceased M.Sethuramalingam, the second respondent passed the impugned order and based on which, the demand notice, dated 19.12.2018, was also sent to the dealer, M/s.Sathya Calendars, in which, the petitioner's husband was a proprietor. The petitioner, who is the wife of the deceased M.Sethuramalingam, has challenged the impugned demand by filing the instant writ petition.

4.Heard Mr.B.Rooban, learned counsel for the petitioner and Mr.M.Jeyakumar, learned Additional Government Pleader for the respondents.

5.According to the learned counsel for the petitioner, the revision of assessment proceedings initiated by the second respondent by their pre revision notice dated 27.04.2018, is barred by the law of limitation, as it has been initiated beyond the prescribed period as stipulated under Section 27 (1) (a) of the TNVAT Act 2006, which prescribes 5 years prior to the amendment, dated 19.06.2012 and subsequent to the amendment it is 6 years. According to the learned counsel for the petitioner, under Section 22(2) of the Act, the assessment was completed for the assessment year 2008-09, on 28.01.2011, whereas the revision of assessment proceedings were initiated by the second respondent on 27.04.2018 and therefore, it is barred by limitation. The learned counsel for the petitioner would further contend that the pre-revision notice dated 27.04.2018, was personally delivered to the business address to the Proprietor concern namely, M/s.Sathya Calendars, when the petitioner's husband M.Sethuramalingam, who was the Proprietor of the aforesaid concern was already dead. Further, he would contend that even the assessment order in the revision of assessment proceedings was also not served on the petitioner or the other legal heirs of the deceased M.Sethuramalingam. But, according to the learned counsel for the petitioner only the impugned demand notice dated 19.12.2018, was received by the petitioner. Therefore, according to the learned counsel for the petitioner no adequate opportunity was granted by the second respondent before passing the assessment order and issuing the consequential impugned demand notice.

6.Per contra, the learned Additional Government Pleader for the respondents would submit that the original deemed assessment has been completed on 30.06.2012, itself and the revision of assessment has been issued on 27.04.2018, and therefore, according to him, the revision of assessment proceedings has been commenced within 6 years and therefore, it is well within the time and satisfies the requirement of Section 27 of the 'Act'. Further, he would contend that a notice for personal hearing was also issued on 25.05.2018, which is also served on the petitioner and despite receipt of the same, the petitioner failed to attend the assessment proceedings. Therefore, according to the learned Additional Government Pleader for the respondents, there is no violation of principles of natural justice and instead of filing a statutory appeal, the petitioner has filed this Writ Petition, which is not maintainable.

7. This Court has perused and examined the assessment order and the consequential impugned demand. As seen from the assessment order, there is no reference to the death of M.Sethuramalingam/husband of the petitioner, who was the Proprietor of M/s.Sathya Calendars. Before this Court, the petitioner has produced the Death Certificate of M.Sethuramalingam, which discloses that he died on 05.06.2017. The revision of assessment notice was sent on 27.04.2018, by the second respondent under Section 27 of the 'Act'. But, as on that date, M.Sethuramalingam, the Proprietor of M/s.Sathya Calendars was dead and therefore, the second respondent ought to have sent the pre-revision notice only to his legal representatives, as per Section 26 of the TNVAT Act, 2006.

8.Section 26 of the Tamil Nadu Value Added Tax Act, 2006, reads as follows:

> *26.Assessment of legal representatives.- Where a dealer dies, his executor, administrator, or other legal representative shall be deemed to be the dealer for the purpose of this Act and the provisions of this Act shall apply to him in respect of the business of the said deceased dealer, provided that, in respect of any tax or fee assessed as payable by any such dealer or any tax, or fee which would have been payable by him under this Act as if he had not died, the executor, administrator or other legal representatives shall be liable only to the extent of the assets of the deceased in his hands.*

9.Further, the assessment order was also not sent to the legal representatives of the deceased Proprietor of M/s.Sathya Calendars. It is therefore evident that the second respondent has violated the statutory requirements as contemplated under Section 26 of the 'Act'.

10.Insofar as the ground of limitation raised by the petitioner is concerned, it is her case that the original assessment for the year 2008-2009 got completed on 28.01.2011, whereas it is the case of the second respondent that the original assessment got completed only on 30.06.2012, and therefore, according to him, the revision of assessment proceedings is well within the prescribed time limit as contemplated under Section 27 of the TNVAT Act, 2006. The issue of limitation will have to be considered by the second respondent while passing the assessment order in the revision of assessment proceedings. But, in the instant case, since the assessment order is not placed before this Court, this Court does not know as to whether the same was not considered or not by the second respondent. The notice of personal hearing, dated 25.05.2018, as well as the pre-revision notice dated 27.10.2018, was served on the petitioner, which was addressed only to M/s.Sathya Calendars, in which, the petitioner's husband M.Sethuramalingam was the Proprietor prior to his death. Therefore, it is evident that the petitioner was not properly served with the notice of personal hearing as well as with the assessment order as contemplated under Section 26 of the TNVAT Act, 2006.

11.For the forgoing reasons, this Court is of the considered view that the principles of natural justice has been violated by the second respondent while passing the assessment order, as well as the consequential impugned demand notice. Even though, the petitioner has sought relief in this Writ Petition only to quash the consequential impugned demand notice, this Court is of the considered view, in view of the violation of principles of natural justice by the second respondent, the assessment order based on which the impugned demand notice was sent has also got to be quashed.

12.In the result, the assessment order under Section 27 of the 'Act', for the assessment year 2008-2009 for the dealer M/s.Sathya Calendars, No.33, Thottian Minatru Street, Madurai-625 001, is hereby quashed and the consequential impugned demand notice, dated 19.12.2018, passed by the second respondent is also quashed and the matter is remanded back to the second respondent for fresh consideration. The second respondent shall issue fresh pre-revision notice under Section 27 of the 'Act', to the legal representatives of the deceased M.Sethuramalingam, namely, Dhanalakshmi, daughter S.Devaki, Son S.Ramani Babu and another Son S.Sathyam, within a period of four weeks from the date of receipt of a copy of this order and on such receipt of the same, the legal representatives of the aforesaid M.Sethuramalingam, shall send a reply within a period of four weeks thereafter, and on receipt of such reply, the second respondent shall pass assessment order after affording adequate opportunity to the petitioner and other legal representatives of M.Sethuramalingam, to raise all objections available to them under law, including the plea of limitation and also grant them the right of personal hearing and pass final orders within a period of eight weeks thereafter.

13.With the aforesaid directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Assistant Commissioner (CT),
South Avani Moola Street Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai, Madurai 625 020.

+1 CC to M/s.SPL GP (SR-60121[F] dated 10/04/2019)

das/aav

W.P.(MD)No.5104 of 2019
and
W.M.P.(MD)No.4067 of 2019
08.04.2019

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