BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **24.07.2019**
CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

W.P.(MD)Nos.590, 591 & 592 of 2015
and
M.P.(MD)Nos.1, 1 & 1 of 2015

Pushpa Pipes Pvt.Ltd.,
Rep.by its Managing Director T.Ramesh,
No.200-201, East Veli Street, (2nd Floor)
Madurai
... Petitioner in all W.Ps.

-Vs-

1.The Commercial Tax Officer,
Chitrakara Street Circle,
Madurai-20.

2.The Branch Manager,
The Tamil Nadu Industiral Invest Corporation Ltd.,
Karaikudi. ... Respondents in all W.Ps.

Common Prayer: Writ Petitions are filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the records on the file of the first respondent in his proceedings in TNGST Nos.4920926/97-98, 4920926/98-99, 4920926/99-00 dated 23.12.2014, 24.12.2014 and quash them as illegal, invalid and un-sustainable.

For Petitioner	:	Mr.A.Chandrasekaran
For R1	:	Mr.J.Padmavathy Devi Special Government Pleader
For R2	:	Mr.G.Murugan (in all writ petitions)

COMMON ORDER

The petitioner had availed a scheme of deferral authorised by the Government of Tamilnadu for encouraging all new industries in the backward and most backward areas of the State.

2.As per G.O.Ms.No.500 dated 14.05.1990, a total waiver / deferral of tax due for a period of 5/ 9 years up to a ceiling of investments in fixed assets was granted. The petitioner company, engaged in the manufacture of PVC pipes was granted the benefit of the scheme and Eligibility Certificate dated 11.07.1996 that enabled it to avail deferral of sales tax to an amount of Rs.17.09 lakhs interest free for a period of five years from the month in which the petitioner unit commenced commercial production was issued. The period of deferral is between 01.10.1990 to 30.09.1999. The tax so deferred is repayable between 22.03.1996 to 21.03.2001 i.e., during the assessment years 1996-1997 to 2000 - 2001.

3.Final assessments in relation to the period 1997 - 1998, 1998 - 1999 and 1999 - 2000 were completed vide orders dated 14.12.1998, 17.12.1999 and 10.04.2001. These orders have attained finality.

4.While this is so, pre-revision notices, all dated 09.07.2010, were issued to the petitioner. The reassessments proposed, in terms of Section 16 of the Tamilnadu General Sales Tax Act 1956 (in short Act), stated that the terms of deferral would be applicable in respect of the expanded manufacturing capacity of the unit alone. The stand adopted by the department was that only tax in relation to the turnover over and above the marked, basic quantity of 675 MT would be deffered and no deferral /waiver is liable to be extended in respect of the tax due on the original installed capacity. Thus according to the respondent, the petitioner had availed excess differal for the aforesaid three periods that were sought to be demanded as belated payment of tax dues with penal interest under Section 24(3) of the Act.

5.The petitioner filed an objection dated 20.07.2010 despite which the impugned orders of assessment have been passed all dated 23.12.2014 in respect of the aforesaid three years.

6.The petition has challenged the impugned assessments on jurisdiction as well as on merits contending on merits, that the scheme, does not anywhere state that the defferal is to be granted only in respect of the turnover from expanded capacity. In any event, he states that the petitioner is a new undertaking.

7.However, I see no need to advert further to the merits seeing as the impugned orders are patently barred by limitation in terms of Section 16 of the Act. Section 16 deals with assessment of escaped turnover and provides for a limitation of five years from the date of order of final assessment within which the assessing authority may bring to tax turnover that, according to him, has escaped assessment. The provisions of Section 16 are extracted hereunder.

> '***Section 16.Assessment of escaped turnover.-*** *(1) (a) Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of sub-section (2), at any time within a period of five years from the [date of order of the final assessment by the assessing authority], determine to the best of its judgment the turnover which has escaped assessment*

and assess the tax payable on such turnover after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such assessment.'

8.In the instant cases, the original assessments have been completed as early as on 14.12.1998 (1997-1998), 17.12.1999 (1998-1999) and 10.04.2001 (1999-2000). Thus proceedings for re-assessment in terms of Section 16 ought to have been completed on or before five years from the aforesaid three dates. However, notices for re-assessment have been served only on 09.07.2010 which is way beyond the statutory limitation.

9.Though no specific defence has been raised in this regard in the counter filed, Mrs.J.Padmavathy Devi, learned Special Government Pleader, appearing for the respondent very fairly, does not dispute either the dates in question or the fact that the impugned assessments are barred by limitation.

10.In the light of the aforesaid discussion, these writ petitions are liable to be allowed and I do so. No order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Commercial Tax Officer,
Chitrakara Street Circle,
Madurai-20.

2.The Branch Manager,
The Tamil Nadu Industiral Invest Corporation Ltd.,
Karaikudi.

+1 CC to Mr.A.CHANDRASEKARAN, Advocate (SR-77570[F] dated 25/07/2019)

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TM/GNS
MK (23.09.2019) 3P 4C