BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.07.2019**

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

W.P.(MD)Nos.3056, 3057, 3058, 3059, 3060 & 3061 of 2016
and
W.M.P.(MD)Nos.2688, 2689, 2690, 2691, 2692, 2693 of 2016

Kanthimathy Estate,
Alancholai,
Kanyakumari District
Unit of the Kanthimathy Plantations (Pvt) Ltd.,
Represented by its Director,
S.Lakshmana Sarma
Plantation House, Pulimoodu Junction,
Pattam P.O.,
Thiruvananthapuram 695 004 ... Petitioner in all Petitions

-Vs-

1. The Assistant Commissioner of Commercial Taxes,
   Kuzhithurai, Kanyakumari District.

2. The Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk, Chennai. ... Respondents in all Petitions

Prayer: Writ Petition is 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 A1/5361/94, dated 03.11.2015 for 1989-90, 1990-91, 1991-92, 1992-93, 1993-94, 1994-95 and quash the same as illegal, arbitrary time barred, without jurisdiction and in violation of the order of the Madras High Court in W.P.No.5686 of 1992, dated 26.07.2001 reported in (2003) 130 STC 166 (Mad) in the case of Kanyakumari District Planter's Association Vs. Deputy Commercial Tax Officer and others.

For Petitioner : Mr.M.Azeem (in all Petitions)
For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader
(In all petitions)

COMMON ORDER

These writ petitions challenge proceedings of the Assistant Commissioner dated 03.11.2015, passed in terms of Section 16 of the

Tamilnadu General Sales Tax Act and have to, straight away be allowed on two grounds. As far as W.P.(MD).Nos.3056 to 3060 of 2016 relating to the periods 1989-1990 to 1993-1994 are concerned, pre-assessment notices, all dated 09.08.1999, were issued proposing to bring tax turnover from the sale of rubber in terms of the provisions of the Central Sales Tax Act, 1956.

2.The petitioners objected to the pre-assessment proposals vide communication dated 23.08.1999. After a lapse of 15 years, the impugned orders have been passed on 03.11.2015 confirming the proposals originally made. Though the TNGST Act (in terms of which assessments under CST are to be framed) does not provide for a period of limitation for completion of original assessments, there has to be a reasonable period that is read into the statute for this purpose.

3. In this connection, a judgment of the Supreme Court in the case of *State of Punjab and others vs. Bhatinda District Co-operative Milk Private Union Limited*, (*2007 (11) SCC 363*) in the context of the Punjab General Sales Tax Act is instructive. Though the Punjab Sales Tax Act also did not provide for a period of limitation, the Supreme Court held that assessments should be completed within a reasonable and acceptable period.

4.In addition, I am also of the view that the period for completion of assessments should also be viewed in the light of the provisions requiring an assessee to maintain books of accounts necessary for the finalisation of assessments.

5.In this regard, useful reference may be made to Sections 40 (2) (a) and 40(2)(b) of the Tamilnadu General Sales Tax Act 1959 that read as follows:

> ***Sec.40(2)(a)*** *Every registered dealer shall keep at the place of business specified in the certificate of registration, books of account for the current year. If more than one place of business in the State is specified in the certificate of registration, the books of account relating to each place of business for the current year shall be kept in the place of business concerned.*
>
> ***Sec.40(2)(b)*** *Every registered dealer shall also ordinarily keep the books of account for the previous five years at such place or places as he may notify to the registering authority. If the registered dealer decides to change the place or places so notified, he shall, before effecting such change, notify the same to the registering authority.*

6.The corresponding Rule, Rule 26(16) in the Tamilnadu General Sales Tax Rules, reads as follows:

> ***Rule 26(16)*** *Accounts maintained by dealers together with all vouchers, relating to stocks, deliveries, purchases, output and sales for a year, shall be preserved by them for a period of five years from the date on which the assessment relating to that year had become final.*

7.It is thus clear that a dealer is required to statutorily maintain and preserve books of accounts and all documents connected and ancillary to its business only for a period of five years from the date on which the assessment relating to that year had become final. In the present case, the periods of assessment stretch from 1989-1990 to 1994-1995. The pre-assessment notices have been sent only on 23.08.1999 and proceedings completed in 2015. Thus even on this score, the time taken for conclusion of proceedings appears inordinately delayed and is thus unacceptable. The impugned orders are quashed.

8.For the sake of completion, even on merits, the issue in question is covered against the revenue by a plain reading of Section 2(r) of TNGST which defines turnover:

> ***Sec.2(r):-*** *"turnover" means the aggregate amount for which goods are bought or sold, or delivered or supplied or otherwise disposed of in any of the ways referred to in clause (n), by a dealer either directly or through another, on his own account or on account of others whether for cah or for deferred payment or other valuable consideration, provided that the proceeds of the sale by a person of agricultural or horticultural produce, other than tea, and rubber (natural rubber latex and all varieties and grades of raw rubber) grown within the State by himself or on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover;*

Thus by statutory definition, consideration from the sale of rubber stands excluded from 'turnover' for the purposes of levy of sales tax.

9.These writ petitions are liable. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Assistant Commissioner of Commercial Taxes,
Kuzhithurai, Kanyakumari District.

2.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai.

+6 CC to Mr.M.AZEEM, Advocate SR-77562,77561,77560,77559,77558,77557

W.P.(MD)Nos.3056 to 3061 of 2016
24.07.2019

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