

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.2793, 2797, 2798 and 2800 of 2020
and

WMP. Nos.3236, 3238, 3242 and 3243 of 2020

M/s.Kurlon Enterprises Limited,
Rep. by its Authorized Signatory,
No.194, 1st Floor, Pycrofts Road,
Royapettah, Chennai - 600 014.

..Petitioner in all WPs

Vs.

State Tax Officer,
Thiruvallikeni Assessment Circle,
Greenways Road,
Chennai 600 028.

..Respondent in all WPs

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records of the respondent in his proceedings in TIN 33500681484/2009-10, 2010-11, 2012-13 & 2011-12 and quash the revisional assessment order passed on 16.12.2019 as time barred and direct the respondent to pass fresh orders by verifying the sales invoices with the credit notes and also other records to decide the sales returns and unfruitfied sales for which exemptions are disallowed by the respondent in this case after given a personal hearing to the petitioner.

For Petitioner : Mr.C.Baktha Siromoni

For Respondent : Mr.Mohammed Shaffiq,
Special Government Pleader

COMMON ORDER

The petitioner challenges orders of assessment passed in terms of the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') for the periods 2009-10 to 2012-13, all dated 16.12.2019.

2. Two grounds are canvassed, the first one relating to bar of limitation. According to the learned counsel for the petitioner, orders of deemed assessment under Section 22(2) of the Act have been passed and as such, the impugned orders are

barred by limitation insofar as they have been passed beyond the time limit stipulated under Section 27 of the Act.

3. The proviso to Section 22(2) stipulates that returns submitted for the years 2006-2007 to 2010-2011 in respect of which assessment orders had not been passed shall be deemed to have been assessed on the 30th day of June 2012 and an order of assessment shall be deemed to have been passed for the periods 2009-10 and 2010-11 on 31.10.2016. Dates of deemed assessments for the periods 2011-12 and 2012-13 are 31.10.2017 and 31.10.2019 respectively. Section 27 uses the phrase 'determination' and the pre-assessment notice commences the process of determination.

4. The interpretation of the term 'determination' and whether it envisages the point of initiation of proceedings or completion of the same came to be considered in *The Sales Tax Officer, Special Circle, Ernakulam and another V. Sudarsanam Iyengar & Sons* (25 STC 252), the Hon'ble Supreme Court held as follows:

Now in view of the previous decisions the principle is firmly established that assessment proceedings under the Sales Tax Act must be held to be pending from the time the proceedings are initiated until they are terminated by a final order of assessment. The distinguishing feature on which emphasis has been laid by (1) [1964] 4 S.C.R. 436. (2) 19 S.T.C. 493. the counsel for the respondent is that the language employed in rule 33 is such as to lead to only one conclusion that the final determination of the turnover which has escaped assessment and the assessment of the tax have to be done within three years. It is pointed out that in the other Sales tax provisions which came up for consideration in the cases mentioned above the words employed were "proceed to assess" e.g., sub-ss. (4) and (5) of s. 11 of the Punjab General Sales Tax Act. Our attention has been invited to the appropriate dictionary meaning of the word "determine" which is "to settle or decide--to come to a judicial decision-- (Shorter Oxford English Dictionary). It is suggested that the word "determine" was employed in Rule 33 with a definite intention to set the limit within which the final order in the matter of assessment should be made, the limit being three years. We find it difficult to accept that in the context of sales tax legislation the use of the words "proceed to assess" and "determine" would lead to different consequences or result. In this connection the words which follow the word "determine" in Rule 33 must be accorded their due signification. The words "assess the tax payable" cannot be ignored and it is clearly meant that the assessment has to be

made within the period prescribed. Assessment is a comprehensive word and can denote the entirety of proceedings which are taken with regard to it. It cannot and does not mean a final order of assessment alone unless there is some thing in the context of a particular provision which compels such a meaning being attributed to it. In our judgment despite the phraseology employed in Rule 33 the principle which has been laid in other cases relating to analogous provisions in sales tax statutes must be followed as otherwise the purpose of a provision like Rule 33 can be completely defeated by taking certain collateral proceedings and obtaining a stay order as was done in the present case or by unduly delaying assessment proceedings beyond a period of three years. It is undoubtedly open to the legislature or the rule making authority to make its intention quite clear that on the expiry of a specified period no final order of assessment can be made. Then taxing authorities would certainly be debarred from completing the assessment beyond the period prescribed as was the case in sub-s. (3) of s. 34 of the Income tax Act, 1922, but such is not the case here and we would hold that the assessment proceedings relating to the year 1962-63 were within time.

5. In the light of the above, it would suffice that proceedings initiating an assessment should commence prior to the date of expiry of limitation. In the present case, notices initiating proceedings for revision of assessments have admittedly been issued on 17.02.2017 in all cases, before the expiry of the period of limitation. This argument is thus rejected.

6. Coming to the merits of the matter, there was a surprise inspection by the Enforcement Wing Officials on 16.08.2016 in the business premises of the petitioner and pursuant to the audit of accounts, various defects were pointed out by the Officers. The petitioner has, on 03.08.2017 written to the respondent officer annexing sales returns statements, along with the invoice number and date of transaction for the four years in question. The communication states that copies of credit notes with sample sales return note as well as invoices were also annexed. Thereafter, under letter dated 29.11.2017, some more details have been annexed along with pen drive containing relevant documentation. The text of the communication indicates that sample bills have been furnished for the periods in question. It is not in dispute that these communications have, in fact, been received by the officers.

7. However, the argument of Mr.Shaffiq is to the effect that all material particulars as required by Rule 10(6)(b)(i)(B) of the Tamil Nadu Value Added Tax Rules, 2007 (in short 'Rules'), have not been supplied, particularly a certificate evidencing receipt of goods returned within a period of six months from date of sale.

8. Be that as it may, it was incumbent on the part of the Officer to have tabulated the materials filed by the assessee in the first instance and compare the same with the requirements of the aforesaid Rule and thereafter come to a conclusion as to whether the Rule stands satisfied. This exercise has not been done and the Officer merely rejects the petitioner's contention on the assumption that there is a failure to produce documentary evidence in support of the claim of sales/returns.

9. I am of the view that the exercise of reconciliation has not been conducted in the manner as required by law. The impugned assessments are thus set aside. The petitioner will appear before the Assessing Officer on Monday, the 7th December, 2020 at 10.30 a.m., without awaiting any further notice in this regard, with all relevant particulars in support of its claim of sales returns and orders of assessment de novo on this aspect shall be passed within a period of four (4) weeks from 07.12.2020, in accordance with law.

10. These Writ Petitions are disposed in the aforesaid terms. No costs. Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
State Tax Officer,
Thiruvallikeni Assessment Circle,
Greenways Road,
Chennai 600 028.

+1cc to Special Government Pleader(Taxes), High Court, Chennai.
in SR.NO..35357

W.P. Nos.2793, 2797, 2798 and 2800 of 2020
and
WMP. Nos.3236, 3238, 3242 and 3243 of 2020

PP (CO)

RV(02/12/2020)