IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 10.12.2020
CORAM
THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU
W.P. No. 31575 of 2017
and
W.M.P. Nos. 34698 and 34699 of 2017

Artistic Art Forum Pvt. Ltd.,
Rep. by its Director,
A.Sampath,
"Ankur Plaza",
Shop No. 5, Basement,
No. 113, G.N.Chetty Road,
T.Nagar,
Chennai - 600 017.
... Petitioner

-vs-

The State Tax Officer,
Pondy Bazaar Assessment Circle,
No. 46, Greenways Road,
Chennai - 600 028.
... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the impugned proceedings of the Respondent passed in TIN/33361522842/2007-08 dated 31.05.2017 consequently confirmed in proceedings in TIN/33341522659/2007-08 dated 16.11.2017 and further rectified in proceedings dated 21.11.2017 and quash the same.

For Petitioner : Mr. N.Murali

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

O R D E R
(through video conference)

Heard Mr. N.Murali, Learned Counsel for the Petitioner and Mrs. G.Dhana Madhri, Learned Government Advocate (Taxes) appearing for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The chronological sequence of events leading to the filing of this Writ Petition are as follows:-

(i) The Commercial Tax Officer, T.Nagar (North) Assessment Circle by Order No. TIN: 33341522659/2007-2008 dated 08.01.2010 had assessed the tax liability of the Petitioner for the year 2007-2008 under Section 22 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the 'TNVAT Act' for short), as it then stood.

(ii) The Commercial Tax Officer, T.Nagar (North) Assessment Circle after issuing Notice in TIN No. 33341522659/2007-08 dated 25.01.2010 had passed re-assessment Order in TIN No. 33341522659/07-08 dated 23.09.2010 increasing the tax liability of the Petitioner under the TNVAT Act.

(iii) The Petitioner, who received the Notice No. TIN 33341522659/07-08 dated 24.02.2016 from the Respondent requiring payment of arrears of tax dues for the year 2006-2007 and 2007-2008, filed the Writ Petition in W.P. No. 13836 of 2016 before this Court challenging the same, which was disposed by order dated 13.04.2016 passed by this Court, holding as follows:-

> "4. Having regard to the submissions made by the learned counsel on either side, since the respondent had passed the order without considering the petitioner's objections and without affording opportunity of personal hearing, the impugned order is liable to be set aside. Accordingly, the impugned order dated 24.02.2016 is set aside and the matter is remanded to the respondent for fresh consideration. The petitioner is directed to file their objections within a period of two weeks from the date of receipt of a copy of this order. The respondent is directed to consider the objections to be filed by the petitioner and decide the matter afresh, on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner."

(iv) In furtherance to the aforesaid order passed by this Court, the Respondent issued a Notice No. RC No/394/2016/A3 dated 16.11.2016 to the Petitioner who sent a reply dated 22.11.2016 for the same.

(v) The Respondent by another Notice No. TIN 33341522659/2007-08 dated 21.04.2017 claimed that in terms of Section 17(1) of the TNVAT Act, duty to discharge the burden for eligibility for exemption from tax for the items referred in the written submission made on 30.11.2016 was on the Petitioner and 15 days time from the date of receipt of that notice was given to produce necessary documents in proof of the same.

(vi) After receipt of reply dated 10.05.2017 from the Petitioner, the Order No. TIN/33361522842/2007-08 dated 31.05.2017 was passed by the Respondent fastening additional tax liability on the Petitioner as Rs. 1,06,75,928/- and imposing penalty of Rs. 1,37,77,812/- for the year 2007-2008 under the TNVAT Act.

(vii) The Petitioner filed the Writ Petition in W.P. No. 21251 of 2017 before this Court challenging the said order of re-assessment dated 31.05.2017 as barred by limitation and this Court by order dated 09.08.2017 disposed the same, holding as follows:-

> "3. The petitioner, who is a registered dealer on the file of the respondent, under the provisions of the Tamil Nadu Value Added Tax Act, 2006 ("TNVAT Act" in short), has challenged the impugned assessment order which is a second revisional order passed under Section 27 of the TNVAT Act, dated 31.05.2017, on the only ground that the entire proceedings is hopelessly barred by limitation.

4. To demonstrate as to how the impugned proceedings is barred by limitation, the learned counsel for the petitioner invited the attention of this Court to certain dates and events, from which it is seen that the petitioner was deemed to have been assessed under Section 22 of the TNVAT Act for the assessment year 2007-2008 on 08.01.2010. The respondent issued a notice under Section 27 of the TNVAT Act on 25.01.2010 proposing to revise the assessment. This notice was well within the period of six years, pursuant to which a revised order had been passed on 23.09.2010 which was also within the period of six years. Subsequently, the second revisional notice was issued on 21.04.2017. The petitioner would contend that this notice is barred by limitation on the ground that it has been issued beyond the period of six years from 08.01.2010 when the petitioner was deemed to be assessed under Section 22 of the TNVAT Act, and also barred by limitation if the date of the first revisional order is reckoned on 23.09.2010. Therefore, the learned counsel for the petitioner would contend that the impugned proceedings is liable to be set aside.

5. The learned counsel for the petitioner further submitted that in the light of the clarification issued by the Commissioner of Commercial Taxes dated 20.04.2001, a Best Judgment Assessment cannot be replaced by another Best Judgment Assessment, which is precisely what has been done by the respondent in the impugned proceedings.

6. However, unfortunately, when the petitioner submitted their objections to the revision notice on 10.05.2017, they have failed to raise the question of limitation as one of the contentions in the objections. Therefore, the respondent cannot be found fault for having decided the matter on merits and rendered a finding. Therefore, the petitioner has to be blamed for the mistake committed by them. However, considering the fact that the plea of limitation is a technical plea and a legal plea and it could be raised at any stage of the proceedings and this Court also is entitled to look into the said plea, this Court is of the opinion that the petitioner should not be shut out without any remedy with regard to such plea, as the plea of limitation if found to be correct, will go to the root of the matter.

7. However, for the above reasons, this Court is not inclined to set aside the impugned order of assessment, as the petitioner had failed to raise the plea of limitation in their objections dated 10.05.2017, but however, giving liberty to the petitioner to file a petition under Section 84 of the TNVAT Act by raising such a plea and if such a petition is filed, the respondent shall consider the petition and whether the plea be a technical or legal plea, the respondent shall examine the same on merits and in accordance with law and pass a speaking order after affording an opportunity of personal hearing to the petitioner. The petitioner shall file such a petition within a period of one week from the date of receipt of a copy of this order and the respondent shall decide the same within a period of two weeks from the date on which the petition is received by the respondent. Till orders are passed in the petition filed under Section 84 of the TNVAT Act, no coercive action shall be initiated against the petitioner for recovery of the tax and penalty quantified in the impugned order."

(viii) The Petitioner then made an application dated 15.09.2017 for rectification under Section 84 of the TNVAT Act, which was rejected by Order No. TIN/ 33341522659/2007-08 dated 16.11.2017 passed by the Respondent. That apart, another Order No. TIN/33341522659/2007-08 dated 21.11.2017 has been passed by the Respondent re-affirming the additional liability of the Petitioner for Rs. 1,06,75,928/- and penalty of Rs. 1,37,77,812/- under the TNVAT Act.

Aggrieved thereby, the Petitioner has filed this Writ Petition.

3. The pivotal attack by the Learned Counsel for the Petitioner on the impugned Order No. TIN/ 33341522659/2007-08 dated 16.11.2017 and Order No. TIN/33341522659/2007-08 dated 21.11.2017 passed by the Respondent is that the order of re-assessment having been made on 23.09.2010, the recovery of the amount thereunder in the demand notice dated 24.02.2016 was the subject matter of challenge in W.P. No. 13836 of 2016 before this Court and it was incumbent upon the Respondent to confine to the computation of the amount due as claimed in that demand notice and could not travel beyond its scope to re-assess the liability of the Petitioner for the year 2007-2008 under the TNVAT Act. It is highlighted that in any event, the power to re-assess tax under the TNVAT Act, which is traceable either to Section 27(1) or Section 84(1) of the TNVAT Act, could be initiated only within a period of six years from the date of assessment on 23.09.2010 and the notice issued on 21.04.2017 after the lapse of the said period of limitation was totally without jurisdiction.

4. Learned Government Advocate appearing for the Respondent contends that inasmuch as this Court by order dated 13.04.2016 in W.P. No. 13836 of 2016 had set aside the demand notice and required the matter to be decided afresh, the Petitioner cannot have any grievance to be ventilated for the re-assessment proceedings, especially when the Petitioner had consciously participated in the proceedings without any demur and is estopped from raising any plea of limitation.

5. Having regard to the aforesaid rival submissions made, it must, at once, be pointed out here that in the order dated 13.04.2016 in W.P. No. 13836 of 2016, this Court had only required the amount demanded in the recovery notice to be determined afresh after affording opportunity hearing to the Petitioner, but the said order cannot amount to setting aside the assessment of tax liability made in the Order in TIN No. 33341522659/07-08 dated 23.09.2010, which had attained finality by then. It is beyond cavil that re-assessment of tax liability

either under Section 27(1) or Section 84(1) of the TNVAT Act could be commenced only within a period of six years from the date of assessment and not thereafter. The legal position is also well established that parties cannot by consent confer jurisdiction on a Statutory Authority who otherwise does not possess the same. Viewed from that perspective, the participation of the Petitioner in the proceedings initiated by the Respondent in Notice No. TIN 33341522659/2007-08 dated 21.04.2017 cannot be construed as enabling the Respondent to re-assess the tax liability of the Petitioner under the TNVAT Act, despite the bar of limitation of six years from the date of assessment already made.

6. In this context, reference must be made to the decision of the Hon'ble Supreme Court of India in Sales Tax Officer -vs- Sudarsanam Iyengar & Sons [(1969) 2 SCC 396], where the same issue arising out of similar provisions in Rule 33 of the Travancore-Cochin General Sales Tax Rules, 1950, and has enunciated the law as follows:-

> "..... 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 something 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 statute 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."

The aforesaid binding ruling has been followed by the Full Bench of this Court in M.Gulam Mohideen -vs- Commissioner of Agricultural Income Tax Board of Revenue (AIR 1978 Mad 327) in a matter arising out of similar provisions in the Tamil Nadu General Sales Tax Act, 1959, where it has been held as follows:-

"10. In State of Punjab -vs- Tarachand Lajpat Raj [19 STC 493] the Court was considering the scope of sub-S. (4) and (5) of S.11 of the Punjab General Sales Tax Act, 1948. It was held in that case that if a dealer furnishes a return under Sub S(1) or when a notice is issued to him under S.11(2) by the assessing authority within the prescribed period, the assessment can be finalised subsequently even after the expiry of the period and no question of limitation would arise. In State of Punjab -vs- Muralidhar Mahabir Parshad [21 STC 29], it was again reiterated that the period of limitation of three years for making the assessment under sub S.(4) and (5) of S.11 of the Punjab General Salestax Act was only for initiating assessment proceedings and that if the proceedings had been initiated within the period prescribed in the said section the proceedings whenever completed will be valid.

....

13. Further, the word 'revise' in S.34(2) is a comprehensive expression and it does not merely denote the passing of the order in revision. The word 'revise' cannot be understood to mean pass an order in 'revision'. Revision is a legal process and does not denote the final act of passing an order terminating the legal process. The legal process consists of various steps such as calling for the records of the proceedings, making an enquiry by the revisional authority or causing an enquiry to be made thereon, and passing final orders thereon as the revisional authority thinks fit. Therefore, the entire process commencing from the calling of the records and ending with the passing of the final order has been termed as revision in the said Section. Each one of the steps in the process is a revisional process. Therefore, if any one of the steps in the process has been initiated within the period of limitation, there is no further limitation on the exercise of the power."

It is clearly evident from the dictum laid down in these authoritative pronouncements that for the purpose of reckoning limitation of six years from the date of assessment under the relevant provision of the TNVAT Act, what is crucial to be ascertained is that the re-assessment proceedings should have commenced within that time limit in order to be valid, and the date of its conclusion would be inconsequential.

7. Having regard to that settled position of law, the notice for commencing re-assessment proceedings had been issued in the present case on 21.04.2017, which is beyond the period of six years from 23.09.2010 when the assessment had been made. In that view of the matter, it is not possible to sustain the impugned Order No. TIN/ 33341522659/2007-08 dated 16.11.2017 and Order No. TIN/33341522659/2007-08 dated 21.11.2017 passed by the Respondent, which shall stand set aside, and the Respondent shall not be entitled to proceed any further in any manner to recover any amount due from the Petitioner in terms of those orders.

In the result, the Writ Petition is ordered. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

vjt
To

The State Tax Officer,
Pondy Bazaar Assessment Circle,
No. 46, Greenways Road,
Chennai - 600 028.

+1 cc to M/s.N.Murali Advocate sr39978
+1 cc to Government Advocate sr40298

W.P. No. 31575 of 2017

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