IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.30725 of 2019
and
WMP. No.30811 of 2019

Tv.Sri Ganea Granites,
Rep. by its Proprietor,
N.Balveersingh, No.2/642 Achamangalam Road,
Nagamangalam Near Sidco Jagatevi Post,
Krishnagiri 635 104.

.. Petitioner

Vs.

The State Tax Officer
Krishnagiri Assessment Circle,
Krishnagiri.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari to call for the records on the files of the respondent in CST.No.945621/2011 -12 dated 05/09/2019 and quash the same as being an order passed beyond the prescribed period of limitation and therefore without jurisdiction and authority of law.

For Petitioner : Mr.R.Senniappan

For Respondent : Ms.Dhanamadhiri,
Government Advocate.

O R D E R

Heard Mr.Senniappan, learned counsel for the petitioner and Ms.Dhanamadhiri, learned Government Advocate for the respondent.

2. The challenge is to an order of assessment dated 05.09.2019, passed under the provisions of the Central Sales Tax Act, 1956 (CST Act) for the period 2011-12.

3. Initially the petitioner had been in receipt of a pre-assessment notice dated 26.02.2019 that had culminated in an order dated 26.04.2019 that came to be challenged in W.P.No.17678 of 2019. The challenge was both on the ground of violation of principles of natural justice as well as on the bar of statutory limitation.

4. By order dated 27.06.2019, a learned single Judge of this Court, being convinced that no effective opportunity had been extended to the petitioner in terms of the proviso to Section 22(4) of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) which specifically provided for a reasonable opportunity be afforded to the petitioner prior to completion of assessment, set aside the assessment impugned in that case.

5. Pursuant thereto, the Assessing Authority re-initiated proceedings by notice dated 23.07.2019. In response, the petitioner, on 19.08.2019 again canvassed the plea of limitation pointing out that the period in question was 2011-12 and the original assessment would have been deemed to have been completed on 30.06.2018.

6. Thus, in light of Section 9(2) of the CST Act, that prescribes that the provisions of the TNVAT Act would apply in all matters of assessment in relation to the CST Act as well, the period of limitation for the completion of an assessment in terms of the CST Act would be six years from date of deemed assessment, expiring on 30.06.2018 in the present case. The pre-assessment notice was dated 26.02.2019 and had come to be challenged invoking the bar of limitation even at the first instance. These are the submissions of the petitioner in a nutshell.

7. Ms.Madhiri would defend the impugned order stating that the present impugned proceedings had been initiated only pursuant to the order of this Court and would thus survive, particularly since, according to her, there had been no challenge on the aspect of limitation at the first instance. The second limb of the submission is factually incorrect in the light of the averments in paragraph 6 of the affidavit filed in support of W.P. No.17678 of 2019 dated 12.06.2019 where the petitioner has specifically raised the bar of limitation.

8. Fairly, she does not dispute the legal position that in terms of Section 9(2) of the CST Act, the provisions of TNVAT Act would apply in matter of assessments relating to CST as well. Section 9(2) is extracted below:

> '9. Levy and collection of tax and penalties.---
> (1)-----
> (2) Subject to the other provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under general sales tax law of the appropriate State shall, on behalf of the Government of India, assess re-assess, collect and enforce payment of tax, including any interest or penalty, payable by a dealer under this Act as if the tax or interest or penalty payable by such a dealer under this Act is a tax or interest or penalty payable under the general sales tax law

of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, 8 [refunds, rebates, penalties,]9 [charging or payment of interest,] compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly: Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may, be rules made in this behalf make necessary provision for all or any of the matter specified in this sub-section.

9. Thus, 'assessment' in Section 9(2) includes reference to a deemed assessment and the timelines set out for the bar of limitation under TNVAT Act would apply with equal force in matters of CST.

10. In the light of the discussion above, this Writ Petition is allowed and the impugned order quashed. No costs. Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The State Tax Officer
Krishnagiri Assessment Circle,
Krishnagiri.

+1cc to special Govt. Pleader (taxes),S.R.No.26148

W.P. No.30725 of 2019
and
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VS(CO)

RV(27/08/2020)