IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 10.12.2020
CORAM
THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU
W.P. No. 30621 of 2018
and
W.M.P. No. 35702 of 2018

Artistic Art Forum Pvt. Ltd.,
Rep. by its Director,
B.Umesh,
"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 notice of the Respondent issued in TIN/33341522659/2010-11 dated 08.10.2018 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 assessment of the Petitioner for the year 2010-2011 was deemed to have been made on 30.06.2012 in terms of proviso to Section 22(2) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the 'TNVAT Act' for short) accepting the turnover reported in the monthly returns filed. Thereafter, the Respondent by Notice No. TIN/33341522659/2010-11 dated 08.10.2018 informed the Petitioner that it had been noticed on verification that a turnover of Rs. 69,94,008/- had been claimed towards exempted sales without furnishing supporting documents which would attract tax liability at the appropriate rate and called upon the Petitioner to file his objections for the proposal with necessary documentary evidence. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the said notice dated 08.10.2018 on the ground that it has been made after the lapse of six years from 30.06.2012 when the assessment for the year 2010-2011 was deemed to have been made as it is in contravention of the bar created in Section 27(1) as well as Section 84(1) of the TNVAT Act.

3. It must, at once, be pointed out here that the Hon'ble Supreme Court of India in Sales Tax Officer -vs- Sudarsanam Iyengar & Sons [(1969) 2 SCC 396] has considered the said 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.

4. Having regard to that settled position of law, the notice for commencing re-assessment proceedings had been issued in the present case on 08.10.2018, which is beyond the period of six years from 30.06.2012 when the assessment was deemed to have been made. In that view of the matter, it is not possible to sustain the impugned Notice No. TIN/33341522659/2010-11 dated 08.10.2018 issued by the Respondent for re-assessment of tax liability of the Petitioner under the TNVAT Act and the same is quashed.

5. Learned Government Advocate appearing for the Respondent contends that the Petitioner has been agitating the matter in respect of assessment year 2007-2008 by way of Writ Petitions and since the assessment for that year had not attained finality, the Respondent is entitled to the benefit of excluding that time under Section 27(7) of the TNVAT Act. It is not possible to countenance the said contention inasmuch as the said provision applies only when it involves a question of law having direct bearing on the assessment or re-assessment in question and it is not the case of the Respondent that such re-assessment was relating to the same question of law as in this case.

In the result, the Writ Petition is ordered. Consequently, the connected Miscellaneous Petition is 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.M.Murali Advocate sr39975

W.P. No. 30621 of 2018

aa28/12/2020