BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:16.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.9590 of 2019

and

W.M.P(MD)No.7535 of 2019

(Through Video Conference)

Ex.R.S.Rubber Products,
Chenbaharamanputhoor,
Represented by its Proprietrix,
Rama Sreenath ... Petitioner

Vs.

The State Tax Officer,
Nagercoil (Rural),
Mead Street,
Nagercoil,
Kanyakumari District. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the file of the respondent herein in CST:507904/2006-07, dated 21.02.2019 and quash the same as in violation of the principles of natural justice, without jurisdiction and barred by limitation.

For Petitioner : Mr.M.Azeem
For Respondent : Mrs.J.Padmavathi Devi,
Special Government Pleader

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O R D E R

This writ petition has been filed challenging the impugned revision of assessment order dated 21.02.2019 passed by the respondent against the petitioner.

2. The primary ground for the challenge to the impugned revision of assessment order made by the respondent is that the revision of assessment proceedings has been initiated by the respondent beyond the period of five years from the date of original assessment and therefore, under Section 16(1)(a) of the Tamilnadu General Sales Tax Act, 1959 r/w Section 9 of Central Sales Tax Act, 1956, the revision of assessment made by the respondent under the

impugned revision of assessment order, is barred by the Law of Limitation.

3. A counter-affidavit has been filed by the respondent wherein it has been stated that exemption was given to the petitioner as stock transfer to a tune of Rs.12,69,190/-. According to him, with regard to the claim, the petitioner earlier filed 'F' Form bearing No.CT-108153 dated 30.03.2006 and according to the respondent, on a scrutiny of 'F' Form, it was noticed that the petitioner had claimed exemption through the same 'F' Form for the whole year.

4. It is also stated in the counter-affidavit that as per Rule 12(5) of the Central Sales Tax (Registration and Turnover) Rules 1957, which was amended by notification dated 16.09.2005, 'F' Form should have been filed for one month. The respondent has also stated in the counter-affidavit that the circular issued by the Commissioner of Commercial Taxes, was prior to the amendment of Rule 12(7) of the Central Sales Tax (Registration and Turnover Rules) 1957, by notification dated 10.09.2005. According to the respondent, instead of filing a statutory appeal, the revision petitioner has filed this writ petition, which is not maintainable.

5. As seen from the counter-affidavit filed by the respondent, the primary plea taken by the petitioner that the revision of assessment proceedings is barred by the Law of Limitation as per Section 16(1)(a) of Tamilnadu General Sales Tax Act, 1959, has not been answered in the counter-affidavit.

6. This Court has perused and examined the impugned revision of assessment order passed under Section 16(1)(a) of the Tamilnadu General Sales Tax Act, 1959 r/w Section 9(2) of the Central Sales Tax Act, 1956.

7. As seen from the impugned revision of assessment order, the second respondent himself has admitted that the original assessment order was passed against the petitioner as early as on 12.06.2009. Admittedly, the revision of assessment notice was also issued on the petitioner by the respondent only on 09.04.2018 as reflected in Reference No.2 in the impugned revision of assessment order ie., beyond the period of five years from the date of the original assessment order. Section 16(1)(a) of the Tamilnadu General Sales Tax Act, 1959 reads as follows:

> *"Section 16.Assessment of escaped turnover:-(1)(a) Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of sub-section (2), at any time within a period of five years from the date of order of the final assessment by the assessing authority, determine to the best of its judgment*

the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such assessment."

8. As seen from Section 16(1)(a) of the Tamilnadu General Sales Tax Act, 1959, it is clear that any revision of assessment can be made only within a period of five years from the date of original assessment order.

9. In the case on hand, the revision of assessment proceedings was initiated against the petitioner on 09.04.2018 as seen from the revision of assessment notice issued by the respondent, which is beyond the period of five years from the date of original assessment. Therefore, Section 16(1)(a) of the Tamilnadu General Sales Tax Act, 1959, gets attracted and the revision of assessment proceedings initiated by the respondent against the petitioner is barred by the Law of Limitation.

10. The decision of the Honourable Supreme Court of India in the case of ***State of Punjab and others v. Bhatina District Cooperative Milk P.Union Ltd.,*** reported in ***[2007] 10 VST 180 (SC)*** as well as the decision of the Honourable Division Bench of this Court in the case of ***M.U.A.Arumugaperumal and Sons v. Additional Commercial Tax Officer (FAC), Srivilliputtur*** reported in ***[2008] 16 VST 188 (Mad),*** relied upon by the learned counsel for the petitioner for the proposition that the writ petition is maintainable when the order lacks jurisdiction or it is barred by the limitation, is squarely applicable to the facts of the instant case.

11. Admittedly, the revision of assessment proceedings initiated by the respondent against the petitioner is barred by the Law of Limitation as per Section 16(1)(a) of the Tamilnadu General Sales Tax Act, 1959. Therefore, the contention of the respondent that the petitioner will have to file a statutory appeal and the writ petition is not maintainable is rejected by this Court.

12. As observed earlier, as seen from the counter-affidavit filed by the respondent, the respondent has not given any answer with regard to the plea of limitation raised by the petitioner in this writ petition. Therefore, it can be inferred that in view of the materials available on record before this Court that the revision of assessment proceedings initiated by the respondent against the petitioner is barred by the Law of Limitation.

13. For the foregoing reasons, the impugned revision of assessment order dated 21.02.2019 passed by the respondent for the assessment year 2006-2007, is hereby quashed and the writ petition is allowed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To:

The State Tax Officer,
Nagercoil (Rural),
Mead Street,Nagercoil,
Kanyakumari District.

Order made in
W.P.(MD)No.9590 of 2019
Dated: **16.12.2020**

pm(CO)
TR(29.12.2020) 4P 2C