IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.3028, 3030 & 3031 of 2019

(Through Video Conferencing)

M/s.Adyar Bakery Private Limited,
Represented by its Director,
No.10, Sardar Patel Road,
Adyar, Chennai - 600 020. ... Petitioner in all W.Ps

Vs

The Assistant Commissioner (ST),
Adyar Assessment Circle,
Chennai - 600 028. ... Respondent in all W.Ps

Common Prayer: Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the respondent and quash the notices issued by the respondent in TIN 33910960958/2007-2008, 2008-2009 and 2009-2010 dated 04.12.2018 and direct the respondent to defer passing orders after the expiry of the limitation period and to provide an opportunity of personal hearing in these cases.

For Petitioner (In all W.Ps)	: Mr.C.Baktha Siromoni
For Respondent (In all W.Ps)	: Mr.D.Ravichander Government Counsel

COMMON ORDER

Mr.D.Ravichander, learned Government Counsel takes notice on behalf of the respondent.

2. The petitioner has filed these writ petitions to quash the impugned notices bearing reference in TIN No.33910960958 issued by the respondent dated 04.12.2018 for the Assessment

Years 2007-2008, 2008-2009 and 2009-2010.

3. These notices are challenged in these writ petitions on the strength of amendment under Section 22(2) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the TNVAT Act) with effect from 19.06.2012. It is submitted that as per proviso to Section 22(2) of the TNVAT Act, in respect of returns submitted for the Assessment Years 2006-2007 to 2010-2011 for which no assessment orders have been passed shall be deemed to have been assessed on 30.06.2012. Prior to the aforesaid amendment, the Assessing Officer was required to accept the returns submitted by the Assessee (dealer), if the returns were accompanied by the proof of payment of tax and the documents prescribed and on such acceptance, the Assessing Authority was required to pass an Assessment Order.

4. Appearing on behalf of the petitioner, the learned counsel has placed reliance on an instruction issued by the Commissioner of Commercial Taxes, Chepauk, Chennai in Letter No.R5/4593/2017 dated 08.01.2021. A reference has been made to Paragraph 14 from the aforesaid instruction, which reads as under:-

> "14. In fine, all the Joint Commissioners, are instructed that excepting the above circumstances specified in the para 13.1(A) to (F), wherever, time limit prescribed under the Act for the purpose of Assessment in all the cases is barred by limitation, no further action in the form of issue of notices, summons need to be taken in all the cases sent through random selection process vide reference 6th cited. Further, wherever notices have already been issued in the cases barred by limitation, said Notices have to be withdrawn immediately as it would amount to causing hardship and harassment to Tax Payers."

5. The learned counsel for the petitioner submits that the only exception even as per the above clarification is under the situation contemplated in Paragraph 13.1 of the instruction for the Assessment Year 2007–2008 to 2013–2014 under Section 27(6), 27(7) and 27(8) of TNVAT Act, 2006.

6. The learned counsel for the petitioner further submits that the petitioner has not filed any proceedings so as to exclude the time under Section 27(6), 27(7) and 27(8) of TNVAT Act, 2006.

7. Defending the stand of the Department, the learned Government Counsel for the respondent submits that the

petitioner has sold the Bakery Products during the Assessment Year with the brand name as "Adyar Bakery" and therefore the petitioner was liable to pay tax at 12.5% from 08.06.2007 to 12.07.2011 and not at 4% and hence the impugned revision notice has been issued.

8. The learned Government Counsel further submits that the issue is now pending in W.A.No.1444 of 2015 before this Court in the case of Tvl. Zaitoon Multicuisine Family Restaurant Vs. The Assistant Commissioner (ST), Thiruvanmiyur Circle, Chennai and therefore the exclusion contemplated in Paragraph 13.1(A) of the instruction dated 08.01.2021 applies to the facts of the case.

9. Heard the learned counsel for the petitioner and the learned Government Counsel for the respondent. I have perused the instructions of the Commissioner of Commercial Taxes, Chepauk, Chennai bearing Letter No.R5/4593/2017 dated 08.01.2021 and the provisions of the TNVAT Act, 2006.

10. The amendment to Section 22(2) of the TNVAT Act, 2006 in the year 2012, if no Assessment Orders were passed for the Assessment Years 2006-2007 to 2010-2011, assessment is deemed to have been completed on 30.06.2012. Since the assessment is deemed to have been completed on 30.06.2012, the avenue to revise the assessment is only under Section 27 of the TNVAT Act, 2006 from the aforesaid date. Section 27(7) of the TNVAT Act, 2006 excludes certain period reads as under:-

> "Section 27.Assessment of escaped turnover and wrong availment of input tax credit:-
>
> (7). In computing the period of limitation for assessment or re-assessment under this section, the time during which any appeal or other proceeding in respect of any other assessment or re-assessment is pending before the High Court or the Supreme Court involving a question of law having a direct bearing on the assessment or re-assessment in question, shall be excluded".

11. The arguments advanced by the learned counsel for the petitioner is acceptable in view of the fact that no other proceedings were pending at the instance of the petitioner so as to exclude the time under terms of Section 27(6), 27(7) and 27 (8) of TNVAT Act, 2006. The fact that the department has taken up the issue in appeal before the Hon'ble Division Bench of this Court in Tvl. Zaitoon Multicuisine Family Restaurant Vs. The Assistant Commissioner (ST), Thiruvanmiyur Circle, Chennai in

W.A.No.1444 of 2015 is of no consequence. It was incumbent on the part of the Department to have issued a notice within a prescribed period under the provision of the TNVAT Act, 2006.

12. Considering the above, the impugned notices are to be declared as time barred and therefore liable to be quashed and are accordingly quashed subject to the rider that the petitioner had filed a complete return for the respective year along with the declaration and document for completing the assessment to invoke Section 27 of the TNVAT Act, 2006.

13. These writ petitions stand allowed with the above observations. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

rgm/arb

To

The Assistant Commissioner (ST),
Adyar Assessment Circle,
Chennai - 600 028.

W.P.Nos.3028, 3030 & 3031 of 2019

SS(CO)
SU(01/12/2021)