IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2021

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.Nos.17528 & 17529 of 2021
&
WMP.Nos.18629 & 18631 of 2021

Kurlon Enterprises Limited,
Rep. By its Area Business Manager,
No.194, 1st Floor, Pycrofts Road,
Royapettah,
Chennai – 600 014

... Petitioner in both WPs

.Vs.

Commercial Tax Officer,
Thiruvallikeni Assesment Circle
Chennai - 600 035.

... Respondent in both WPs

Prayer in both WPs:-

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus or any other appropriate writ, direction or order calling for the records of the respondent in his proceedings in TIN 33160680798/2011-12 and TIN 33160680798/2012-13 and quash this impugned assessment order passed on 12.03.2021 and direct the respondent to pass fresh orders after verifying the details filed by the petitioner on 09.03.2021 and pass fresh orders after giving an opportunity of personal hearing to the petitioner.

For Petitioner in both Petitioner	:	Ms.Hemamalini for Mr.C.Baktha Siromoni
For Respondent in both Respondent	:	Ms.Amirta Dinakaran Government Advocate

COMMON ORDER

Captioned writ petitions and 'Writ Miscellaneous Petitions' ('WMPs' in plural and 'WMP' in singular for the sake of brevity) thereat are in the Admission Board.

2. Mr.C.Baktha Siromoni, learned counsel for writ petitioner is before this Virtual Court. Learned counsel submits that captioned matter arises under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)', which shall hereinafter be referred to as 'TNVAT Act' for the sake of convenience and clarity.

3. 'Two orders pertaining to escaped turnover made under Section 27 of TNVAT Act qua Assessment Years 2011-12 and 2012-13, both dated 12.03.2021 bearing reference TIN 33160680798/2011-12 and TIN 33160680798/2012-13' (hereinafter 'impugned orders' in plural and 'impugned order' in singular for the sake of convenience and clarity) have been called in question in the captioned writ petitions.

4. To be noted this is the second round of litigation.

5. Learned counsel commenced by saying that the impugned orders are clearly vitiated by limitation as the same are beyond six years from the date of assessment. To be noted, deemed assessment with regard to first impugned order was on 31.03.2012 and deemed assessment with regard to second impugned order was on 31.03.2013. Therefore, six years elapsed qua first impugned on 31.03.2018 and qua second impugned order on 31.03.2019. In my considered view, learned counsel cannot even be heard to make this submission on limitation as the same has been raised in the previous round of litigation and the same has been conclusively decided by another Hon'ble single Judge of this Court vide a common order made in W.P.Nos.2793, 2797, 2798 and 2800 of 2020 dated 02.11.2020. A scanned reproduction of the order is as follows:

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2020

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P. Nos.2793, 2797, 2798 and 2800 of 2020
and
WMP. Nos.3236, 3238, 3242 and 3243 of 2020

M/s.Kurlon Enterprises Limited,
Rep. by its Authorized Signatory,
No.194, 1st Floor, Pycrofts Road,
Royapettah, Chennai – 600 014.
..Petitioner in all WPs

Vs.

State Tax Officer,
Thiruvallikeni Assessment Circle,
Greenways Road,
Chennai 600 028.
...Respondent in all WPs

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records of the respondent in his proceedings in TIN 33500681484/2009-10, 2010-11, 2012-13 & 2011-12 and quash the revisional assessment order passed on 16.12.2019 as time barred and direct the respondent to pass fresh orders by verifying the sales invoices with the credit notes and also other records to decide the sales returns and unfruitfied

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sales for which exemptions are disallowed by the respondent in this case after given a personal hearing to the petitioner.

For Petitioner : Mr.C.Baktha Siromoni

For Respondent : Mr.Mohammed Shaffiq, Special Government Pleader

COMMON ORDER

The petitioner challenges orders of assessment passed in terms of the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') for the periods 2009-10 to 2012-13, all dated 16.12.2019.

2. Two grounds are canvassed, the first one relating to bar of limitation. According to the learned counsel for the petitioner, orders of deemed assessment under Section 22(2) of the Act have been passed and as such, the impugned orders are barred by limitation insofar as they have been passed beyond the time limit stipulated under Section 27 of the Act.

3. The proviso to Section 22(2) stipulates that returns submitted for the years 2006-2007 to 2010-2011 in respect of which assessment orders had not been passed shall be deemed to have been assessed on the 30th day of June 2012 and an order of

assessment shall be deemed to have been passed for the periods 2009-10 and 2010-11 on 31.10.2016. Dates of deemed assessments for the periods 2011-12 and 2012-13 are 31.10.2017 and 31.10.2019 respectively. Section 27 uses the phrase '*determination*' and the pre-assessment notice commences the process of determination.

4. The interpretation of the term '*determination*' and whether it envisages the point of initiation of proceedings or completion of the same came to be considered in *The Sales Tax Officer, Special Circle, Ernakulam and another V. Sudarsanam Iyengar & Sons* (25 STC 252), the Hon'ble Supreme Court held as follows:

> *Now in view of the previous decisions the principle is firmly established that assessment proceedings under the Sales Tax Act must be held to be pending from the time the proceedings are initiated until they are terminated by a final order of assessment. The distinguishing feature on which emphasis has been laid by (1) [1964] 4 S.C.R. 436. (2). 19 S.T.C. 493 the counsel for the respondent is that the language employed in rule 33 is such as to lead to only one conclusion that the final determination of the turnover which has escaped assessment and the assessment of the tax have to be done within three years. It is pointed out that in the other Sales tax provisions which came up for consideration in the cases mentioned above the words employed were "proceed to assess" e.g., sub-ss. (4) and (5) of s. 11 of the Punjab General Sales Tax Act. 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"*

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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 some thing 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 statutes 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. It is undoubtedly open to the legislature or the rule making authority to make its intention quite clear that on the expiry of a specified period no final order of assessment can be made. Then taxing authorities would certainly be debarred from completing the assessment beyond the period prescribed as was the case in sub-s. (3) of s. 34 of the Income-tax Act, 1922, but such is not the case here and we would hold that the assessment proceedings relating to the year 1962-63 were within time.

5. In the light of the above, it would suffice that proceedings initiating an assessment should commence prior to the date of expiry of limitation. In the present case, notices initiating proceedings for revision of assessments have admittedly been issued on 17.02.2017 in all cases, before the expiry of the period of limitation. This argument is thus rejected.

6. Coming to the merits of the matter, there was a surprise inspection by the Enforcement Wing Officials on 16.08.2016 in the business premises of the petitioner and pursuant to the audit of accounts, various defects were pointed out by the Officers. The petitioner has, on 03.08.2017 written to the respondent officer annexing sales returns statements, along with the invoice number and date of transaction for the four years in question. The communication states that copies of credit notes with sample sales return note as well as invoices were also annexed. Thereafter, under letter dated 29.11.2017, some more details have been annexed along with pen drive containing relevant documentation. The text of the communication indicates that sample bills have been furnished for the periods in question. It is not in dispute that these communications have, in fact, been received by the officers.

7. However, the argument of Mr.Shafiq is to the effect that all material particulars as required by Rule 10(6)(b)(i)(B) of the Tamil Nadu Value Added Tax Rules, 2007 (in short 'Rules'), have not been supplied, particularly a certificate evidencing receipt of goods returned within a period of six months from date of sale.

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8. Be that as it may, it was incumbent on the part of the Officer to have tabulated the materials filed by the assessee in the first instance and compare the same with the requirements of the aforesaid Rule and thereafter come to a conclusion as to whether the Rule stands satisfied. This exercise has not been done and the Officer merely rejects the petitioner's contention on the assumption that there is a failure to produce documentary evidence in support of the claim of sales/returns.

9. I am of the view that the exercise of reconciliation has not been conducted in the manner as required by law. The impugned assessments are thus set aside. The petitioner will appear before the Assessing Officer on Monday, the 7th December, 2020 at 10.30 a.m., without awaiting any further notice in this regard, with all relevant particulars in support of its claim of sales returns and orders of assessment de novo on this aspect shall be passed within a period of four (4) weeks from 07.12.2020, in accordance with law.

W.P. Nos.2793, 2797, 2798 and 2800 of 2020

10. These Writ Petitions are disposed in the aforesaid terms. No costs. Connected Miscellaneous Petitions are closed.

02.11.2020

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Index: Yes
Internet: Yes
Speaking order

To
State Tax Officer,
Thiruvallikeni Assessment Circle,
Greenways Road,
Chennai 600 028.

6. There is no disputation or disagreement that the above order of Hon'ble single Judge has been given legal quietus and has attained finality as there is no intra-court appeal. On the contrary, both sides have acted upon the order. To be noted, it is the specific case of learned counsel for writ petitioner that pursuant to the aforementioned earlier order, the writ petitioner went before the Commercial Tax Officer on 07.12.2020 for personal hearing (paragraph 9 of the earlier order, which has been scanned and reproduced supra), writ petitioner having moved this Court, having obtained an order and having acted on the order cannot now be heard to raise the point of limitation again. Therefore, I have no hesitation in coming to the conclusion that with regard to limitation, the aforementioned earlier order made by Hon'ble Single Judge (which has been given legal quietus and has attained finality) will govern this case.

7. This takes us to the next point which turns on paragraph 9 of the aforementioned earlier order wherein Hon'ble single Judge has, in the facts and circumstances of the case on hand had decided at Ladyship's discretion to give a personal hearing. It is because of such view that 07.12.2021, 10.30.a.m had been fixed as date and time for personal hearing. The venue is office of the sole respondent.

8. Before I proceed further, in State Bank of India officers case law (vide order dated 01.08.2019 in W.P.No.22634 of 2019) explaining the expression 'reasonable opportunity to show cause' occurring in proviso to Section 27 (2) of TNVAT Act, I had held that this expression will not include personal hearing. The reason is, the same Statute i.e., TNVAT Act uses the term 'reasonable opportunity of being heard' in other provision i.e., proviso to Section 22(4). It is not necessary to dilate much on this owing to the nature of the case on hand. It will suffice to say that this order made by me was assailed by way of a writ appeal and the same was dismissed by a Hon'ble Division Bench vide order dated 16.12.2019 made in W.A.No.4073 of 2019.

9. Therefore, personal hearing for passing orders under Section 27 of TNVAT Act qua escaped turnover or wrong availment of 'Input Tax Credit' ('ITC' for the sake of brevity) is not statutorily imperative. However, in this case, Hon'ble Judge has chosen to grant personal hearing and therefore, it is necessary to comply with the order.

10. With the above observation, I now revert to the case on hand.

11. With regard to the case on hand, learned counsel for writ petitioner submits that on 07.12.2020, the writ petitioner's representative went over to the office of the respondent, but they were asked to go away owing to Corona virus pandemic. Learned counsel submits that objections have been sent by way of registered post with acknowledgement due, the same have been duly received by the respondent on 10.03.2021 at 04.28 p.m, but the impugned orders have been made on 12.03.2021 without considering the objections. Postal track consignment download (hard copy) placed before this Court reads as follows:

You are here: Home>> Track Consignment

Track Consignment

* Indicates a required field.

Quick help

* Consignment Number

ET010889515IN

Track More

Booked At	Booked On	Destination Pincode	Tariff	Article Type	Delivery Location	Delivery Confirmed On
Mylapore H.O	09/03/2021 15:14:25	600035	47.20	Speed Post Parcel Domestic	Nandanam S.O	10/03/2021 16:28:09

Event Details For : ET010889515IN

Current Status : Item Delivery Confirmed

Date	Time	Office	Event
10/03/2021	16:28:09	Nandanam S.O	Item Delivery Confirmed
10/03/2021	10:12:31	Nandanam S.O	Out for Delivery
10/03/2021	09:06:13	Nandanam S.O	Item Received
10/03/2021	05:27:15	Chennai NSH	Item Dispatched
10/03/2021	05:16:44	Chennai NSH	Item Bagged
09/03/2021	23:34:03	Chennai NSH	Item Received
09/03/2021	18:00:26	Mylapore H.O	Item Dispatched
09/03/2021	16:49:50	Mylapore H.O	Item Bagged
09/03/2021	15:14:25	Mylapore H.O	Item Booked

12. Ms.Amirta Dinakaran, learned Revenue counsel accepts notice on behalf of sole respondent. Learned counsel adverting to the impugned order submits that sufficient opportunity has been given to the writ petitioner and in support of her contention, learned counsel draws the attention of this Court to the tabulation which talks about nature of opportunity given. It appears that opportunity has in fact been given to the writ petitioner, but there are lacunae, which this Court is able to see. They are, the impugned order does not say what transpired on 07.12.2020 and does not even mention the term 'personal hearing'. The other lacuna is, objections, though received on 10.03.2021, have not been considered in the impugned order dated 12.03.2021.

13. Therefore, without expressing any opinion on the contradictory versions qua what transpired on 07.12.2021, the following orders is passed:

(a) Impugned orders being orders dated 12.03.2021 bearing reference TIN 33160680798/2011-12 and TIN 33160680798/2012-13 are set aside solely on the ground that there is no mention about personal hearing on 07.12.2020 in spite of a specific directive from this Court and the objections of the writ petitioner received on 10.03.2021 have not been considered;

(b) As a sequitur to the previous limb, though obvious it is made clear that this Court has not expressed any opinion or view on the merits of the matter;

(c) As Hon'ble predecessor judge has chosen to give a personal hearing, as a matter of judicial discipline, personal hearing by consent now stands fixed on 05.10.2021 at half past eleven (11.30 am) in the forenoon and the venue will be office of the respondent.

d) It is open to the writ petitioner to reiterate the objections sent and received by the respondent on 10.03.2021

e) Post above personal hearing on 05.10.2021, the respondent shall do the exercise de novo and pass orders within three weeks therefrom i.e., on or before 26.10.2021.

Captioned writ petitions are disposed of with the aforementioned directives. Consequently connected miscellaneous petitions are disposed of as closed. There shall be no order as to costs.

GPA/NST 28.09.2021

"For Being Metioned"

These cases having been listed on 08.10.2021 for being mentioned in pursuance of the earlier Order of this Court dated 28.09.2021 and made herein, in the presence of Ms.Hemamalini, for Mr.C.Baktha Siromoni, Advocate for the petitioner and of M/s.Amirta Dinakaran, Government Advocate for the Respondent and this Court made the following order:-

Captioned matter is listed under the cause list caption 'FOR BEING MENTIONED'.

2. This Court is informed that some delay had occurred in communication of the order i.e., 'order dated 28.09.2021 made in W.P.Nos.17528 & 17529 of 2021 and W.M.P.Nos.18629 & 18631 of 2021' [hereinafter 'said order' for the sake of convenience and clarity] and therefore, personal hearing could not be held on 05.10.2021 as per paragraph No.13(c).

3. Now, personal hearing is re-fixed (by consent) on 27.10.2021 Wednesday at half past eleven (11.30 a.m.) and the venue will be office of the respondent. Therefore, sub-paragraph (e) of paragraph 13 will also undergo a consequential change, as the change in personal hearing date vide sub-paragraph (c) will have cascading effect on sub-paragraph (e). Respondent shall do the exercise *de novo* and pass orders within three weeks from 27.10.2021 i.e., on or before 17.11.2021. For the purpose of abundant clarity and specificity, it is made clear that sub-paragraphs (c) and (e) of paragraph 13 of said order will now read as follows:

> (c) As Hon'ble predecessor judge has chosen to give a personal hearing, as a matter of judicial discipline, personal hearing by consent now stands fixed on 27.10.2021 at half past eleven (11.30 am) in the forenoon and the venue will be office of the respondent;
>
> (e) Post above personal hearing on 27.10.2021, the respondent shall do the exercise *de novo* and pass

orders within three weeks therefrom i.e., on or before 17.11.2021;

{The changes alone are in different/bold font for ease of reference}

4. The above two sub-paragraphs will substitute the existing sub-paragraphs in said order. In all other aspects, said order will remain the same.

5. Registry to issue this order copy by 21.10.2021.

mk 08.10.2021

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To
The Commercial Tax Officer,
Thiruvallikeni Assesment Circle
Chennai - 600 035.

+2ccs to Mr.C.Baktha Siromoni, Advocate, S.R.No.53005,50680
+1cc to the Special Government Pleader, S.R.No.50258

W.P.Nos.17528 & 17529 of 2021 &
WMP.Nos.18629 & 18631 of 2021

CP(CO)
NSK/21/10/2021