

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	09.02.2021
Pronounced On	11.06.2021

CORAM:

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P. Nos. 2083 and 2084 of 2017
and

W.M.P. Nos. 2055 and 2056 of 2017

M/s.Sisco Medicals Device Private Limited,
Represented by its Managing Director,
Vivek Bajaj,
No.6/153, Mount Poonamalli Road,
Ramapuram, Chennai - 600 089. ... Petitioner in both W.Ps

Vs

The Assistant Commissioner (CT),
Nandambakkam Assessment Circle,
No.17, Loganathan Street,
Choolaimedu, Chennai - 600 094. ... Respondent in both W.Ps

Prayer in W.P.No.2083 of 2017: Writ 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 in CST.No.650884/2008-2009 dated 15.11.2016 and quash the same as illegal, against proviso to Section 22(2) of TNVAT Act, without jurisdiction and authority of law and in violation of principles of natural justice and fair play.

Prayer in W.P.No.2084 of 2017: Writ 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 in CST.No.650884/2009-2010 dated 08.12.2016 and quash the same as illegal, against proviso to Section 22(2) of TNVAT Act, without jurisdiction and authority of law and in violation of principles of natural justice and fair play.

For Petitioner : Mr.T.Pramodkumar Chopda
(In both W.Ps)

For Respondent : Ms.G.Dhanamadhri
(In both W.Ps) Government Advocate

COMMON ORDER

By this common order, both the writ petitions are being disposed.

2. In these writ petitions, the petitioner has challenged the orders passed for the Assessment Years 2008-2009 & 2009-2010 under Central Sales Tax Act, 1956. In both cases, the

petitioner was issued with a notice for the assessment on 28.12.2011 and on 06.11.2014.

3. The learned counsel for the petitioner submits that these Assessment Orders came to be passed after the amendments were made to the provisions of the Tamil Nadu Value Added Tax Act, 2006 vide an Act 23 of 2012 with effect from 19.06.2012. It is submitted that though notice for the assessments were issued to the petitioner on 28.12.2011 and on 06.11.2014, since the assessments were not completed, by operation of law as per the amendment under Section 22(2) of the Tamil Nadu Value Added Tax Act, 2006, there was deemed assessment under the provisions of the Central Sales Tax Act, 1956. It is submitted that the impugned orders were (passed) without any jurisdiction. This aspect was also considered by this Court vide its order dated 13.01.2017 while granting interim relief to the petitioner by restraining the respondent from proceeding further with the recovery proceedings.

4. It was submitted that the impugned orders are without jurisdiction in view of the amendment under proviso Section 22 (2) of the Tamil Nadu Value Added Tax Act, 2006 with effect from dated 19.06.2012. Therefore, these orders are liable to be quashed while giving liberty to the respondent to initiate appropriate proceedings against the petitioner to recover the tax that may have escaped assessment in accordance with law.

5. It is the contention of the petitioner that the impugned orders dated 15.11.2016 & 08.12.2016 have been passed pursuant to the notices dated 28.12.2011 and 19.11.2014 for the Assessment Years 2008-2009 & 2009-2010.

6. The learned counsel for the petitioner further submits that there was a fire accident in the petitioner's factory on 13.08.2012 and a F.I.R came to be filed on 14.08.2012 and that subsequently due to the flood that ravaged the Chennai City during December 2015, not only the stocks of the petitioner's were lost but also the records. Therefore, there are no records that are available with the petitioner's company relating the sales, returns filed for the Assessment Years 2008-2009 & 2009-2010.

7. The learned counsel for the petitioner further submits that as per the amendment to the Tamil Nadu Value Added Tax Act, 2006 vide Tamil Nadu ACT 13/2015 with effect from 29.01.2016, the assessments which had not been completed for the Assessment Years commencing from 2006-2007 up to 2010-2011, it shall be deemed to have been assessed on 30.06.2012. Therefore, the impugned orders passed were contrary to the provisions of the Tamil Nadu Value Added Tax Act, 2006 as made applicable to assessment under Central Sales Tax Act, 1956. It was for the Assessing Officer to issue a notice under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 within the period of limitation. Instead, the impugned orders dated

15.11.2016 and 08.12.2016 have been for the respective Assessment Years 2008-2009 & 2009-2010.

8. The learned counsel for the petitioner further submits that even at the time of considering the stay petition, this Court considered the hardship caused to the petitioner and therefore restrained the respondent from initiating recovery proceedings against the petitioner.

9. It is further submitted that the Court has not granted any stay or injunction to restrain the respondent from invoking jurisdiction (power) under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 and therefore, any notice that can be issued will have to pass the test of limitation under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 and therefore prays for allowing the writ petitions.

10. In this connection, the learned counsel for the petitioner placed reliance on the decision of this Court in Venkateswara & Co. Vs Deputy Commercial Taxes Officer, (133) STC 606, wherein, the Court held as follows:-

"If there had been a lacuna in the initiation of the proceeding in that it was initiated beyond the time prescribed, that lacuna will certainly deprive the authority concerned of the jurisdiction to exercise the power of revision as per section 16 of the Act."

11. The learned counsel for the petitioner also referred to another decision of the Hon'ble Supreme Court rendered in I.T.C Ltd. Vs Superintendent of Commercial Taxes and others, (119) STC 530, wherein, the Hon'ble Supreme Court held that notices are mandatory and cannot be waived.

12. It is the contention of the learned counsel for the petitioner that if an order cannot be passed based on a fresh notice to be issued, henceforth, no useful purpose will have to be asking the respondent to issue fresh notice and pass fresh speaking order.

13. The learned counsel also referred to the decision of this Court in Sri Ganea Vs The State Tax Officer, Krishnagiri in W.P.No.30725 of 2019, wherein, this Court by an order dated 04.08.2000, has concluded that the limitation prescribed under the Tamil Nadu Value Added Tax Act, 2006, would apply to the assessment under the Central Sales Tax Act, 1944.

14. There, the Assessment Orders came to be passed pursuant to a notice dated 14.03.1980 and the limitation for issuing the said notice expired on 31.03.1980. The Assessment Orders were set aside by the Appellate Assistant Commissioner (Commercial Taxes), by directing the Deputy Commercial Taxes Officer to issue a fresh notice and after inviting their objections to pass fresh order.

15. Pursuant to the order of the Appellate Assistant Commissioner (Commercial Taxes), the Deputy Commercial Tax Officer issued notice dated 05.02.1981. By which time, last date for issuing notice under Section 16 of the Tamil Nadu General Sales Tax Act, 1959 has already expired.

16. Finally, the learned counsel for the petitioner also referred to the decision of the Rajasthan High Court in Jaipur Udyog Ltd. Vs Commercial Tax Officer, 44 STC 456, wherein, the Rajasthan High Court while dealing with Section 12 of the Rajasthan Sales Tax Act, 1954, held that, if the business of a dealer has escaped, assessment to tax for any reason, the Assessing Authority can serve upon the dealer a notice in the prescribed form at any time within a period of eight years next succeeding that to which the tax relates. There, the notice was issued beyond a period of eight years of the expiry of the relevant Assessment Years and therefore the notice was held bad in law.

17. The learned counsel for the petitioner submits that the Rajasthan High Court passed the above order taking note of the decision of the Hon'ble Supreme Court in Commissioner of Income-Tax, Delhi and Rajasthan Vs Rao Thakur Narayan Singh, [1965] (56) I.T.R 234 and in Commissioner of Income-Tax, Kerala Vs Thayaballi Mulla Jeevaji Kapasi, [1967] 66 I.T.R 147 (S.C).

18. Defending the impugned orders, the learned Government Advocate for the respondent submits that mere wrong quoting of provision or use of the expression deemed assessment in the impugned orders ipso facto will not vitiate the orders passed by the respondent on 15.11.2016 and on 08.12.2016 for the respective Assessment Years.

19. In this connection, the learned Government Advocate for the respondent placed reliance on the decision of this Court in R.E.M.RamakuttyNadar Vs The State of Madras, (1973) 31 STC 44, wherein, the Division Bench of this Court taking note of several decisions of the Hon'ble Supreme Court held that mere wrong quoting of provision will not vitiate/invalidate the order. She further refers to another decision of this Court in Oveekee Textiles Vs The Deputy Commercial Tax Officer, Tiruchengode, (1971) 27 STC 439, wherein, the Division Bench of this Court held as follows:-

"8.

It cannot be said that if the assessing authority quotes or misquotes one or the other of the above two sections while imposing the penalty, the order itself if vitiated, erroneous and ineffective in the eye of law.

9.

If an authority has the necessary power and

particularly statutory power to deal with the subject and pass necessary orders which is only a faculty to decide legally, justly and truly, then an erroneous invitation to or quotation of a wrong provision of law in the notice whereunder the proceedings are initiated does not matter at all. It is the substance that matters and not the form."

20. The learned Government Advocate for the respondent also submits that the demand in the impugned orders are on account of failure of the petitioner to furnish Form-C on the Inter-State sale effected by the petitioner and even after the records of the petitioner will lost during the relevant Assessment Years in a fire accident on 13.08.2012 and subsequently during the ravishing flood in December 2015, it was open for the petitioner to procure duplicate and counterfoil copies of Form-C from whom the Inter-State sales were effected under Section 8(3)(b) of the Central Sales Tax Act, 1956.

21. The learned Government Advocate for the respondent drew attention to Paragraphs 12 & 14 from the decision of the Hon'ble Supreme Court in India Agencies(Regd.), Bangalore Vs Additional Commissioner of Commercial Taxes, Bangalore, (2005) 2 SCC 129 which are reproduced below:-

"12. We have carefully considered the elaborate submissions made by the learned Senior Counsel. It is contended on behalf of the appellant that in respect of the Inter-State sales transactions, the appellant had collected 279 original C Forms and duplicates and that the appellant had separated original C Forms for submitting the same to the assessing officer and kept the duplicates separately. The entire file containing the originals had thereafter been misplaced and, therefore, the appellant could file only the duplicates. It is submitted that under Rule 12(2) of the Central Sales Tax (Registration and Turnover) Rules, 1957 in case of loss of original C Forms, if he complies with the above rule, the appellant will be eligible for the concessional rate of sales tax. It is stated that when the appellant had complied with the said rule, there is no reason for denial of the concessional rate. The impugned order passed by the respondent was, therefore, erroneous and it is set aside restoring the order of the assessing authority. In our opinion, the said contention is not tenable and has no force. We have already extracted Rule 6(b)(ii) of the Central Sales Tax (Kartanataka) Rules, 1957 and Rules 12(2) and 12(3) of the Central Sales Tax (Registration and

Turnover) Rules, 1957. In our view, the rule has to be strictly construed. Admittedly, the appellant has not complied with the said provisions and, therefore, he is not entitled to the concessional rate of tax under Section 8 of the Central Sales Tax Act. Section 8(4) specifically provides that the provisions of sub-section (1) shall not apply to any sale in the course of Inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner. Section 8(4)(a) also provides that a declaration be duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority. On the above provision, a registered dealer will not be entitled to the concessional rate of tax in respect of Inter-State sales made by him without the production of the declaration referred to under clause (a) of sub-section (4) noted above.

13.

14. We are of the view that Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957 which provides for furnishing of the original C Form in order to claim the concessional rate of tax is consistent with the provisions of the Central Sales Tax Act and there is no conflict between the provisions of Rules 12(2) and (3) of the Central Sales Tax Rules and Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957 as contended by the appellant. Rule 12 of the Rules is intended to prevent misuse of C Forms by unscrupulous and mischievous dealers and makes it obligatory for the dealer to furnish indemnity bond. In other words, in order to claim concessional rate of tax, the original C Form has to be attached to the return as provided under Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957. It is not a mere formality or technicality but it is intended to achieve the object of preventing the forms being misused for the commission of fraud and collusion with a view to evade payment of taxes. In our opinion, Rule 6(b)(ii) which is clear and categorical cannot be liberally construed but it should be construed strictly. We, therefore, hold that without producing the original of the C Form as prescribed under Rule 6(b)(ii) of the Rules, the appellant is not entitled to concessional rate of tax under sub-section (4) of Section 8 of the Act."

22. Finally, the learned Government Advocate for the respondent submitted that for the Assessment Year 2008-2009, a pre-assessment notice was issued on 28.12.2011, which was duly received and acknowledged by the petitioner.

23. The learned Government Advocate for the respondent also submits for the Assessment Year 2009-2010, a 2nd notice was issued on 06.11.2014 and the petitioner was called upon to furnish Form C within a period of 7 days from the date of receipt of the said notice. She further submits that even after the said notice was received by the petitioner, the petitioner failed to participate or reply to the said notice. She submits that yet another notice was issued on 02.02.2016 for the Assessment Year 2009-2010, to which also the petitioner failed to respond.

24. Finally, the learned Government Advocate for the respondent submits that the power to reopen the assessment under Section 27 of the Tamil Nadu Value Added Tax Act, 2006, has been exercised within the period of limitation of six years from the date of deemed assessment and therefore even if the impugned order is wrongly titled as deemed assessment, it cannot be said that the order is vitiated.

25. The learned Government Advocate for the respondent submits that the impugned orders had been passed within a period of limitation prescribed under Section 27 of the Tamil Nadu Value Added Tax Act, 2006.

26. By way of rejoinder, the learned counsel for the petitioner invited attention to a recent decision of the Hon'ble Supreme Court in Asstt. Commr.(CT), LTU, Kakinada Vs Glaxo Smith Kline Consumer Health Care Ltd., in C.A.No.2413 of 2020, dated 06.05.2020, where the Hon'ble Supreme Court has held that the limitation prescribed under the Act for filing the appeal cannot be extended. The learned counsel also refers to the decision of the Rajasthan High Court in Jaipur Udyog Ltd., Vs Commercial Taxes Officer, Special Circle, Ajmer, wherein, the operative portion of the order reads as under:-

".....

We are definitely of the view that the appellate or revisional authority, while holding the notice of assessment or reassessment to be invalid, could not direct the assessing authority to take fresh proceedings for assessment or reassessment, if the same had already become time-barred. More-over, even if such a direction is given by the appellate or revisional authority, it would not have the effect of conferring jurisdiction on the assessing authority to initiate fresh proceeding under section 12 of the Act by issuing a notice for assessment or reassessment, if the period of limitation

prescribed in the aforesaid section during which such notice can be validly issued has already expired."

27. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondent. In these proceedings, the petitioner has questioned the correctness of the reassessment order dated 16.11.2016 and 08.12.2016 for the Assessment Years 2008-2009 and 2009-2010 under the provisions of the Central Sales Tax Act, 1956 respectively. For the purpose of assessment under the provisions of the Central Sales Tax Act, 1956, the provisions of the Tamil Nadu Value Added Tax Act, 2006 has been made applicable.

28. The provisions of the local tax enactment namely the Tamil Nadu Value Added Tax Act, 2006 has been made applicable for assessment under the provisions of the Central Sales Tax Act, 1956 vide Section 9 (2) of the said Act.

29. The petitioner had been issued with notices dated 28.12.2011 for the assessment year 2008-2009 and notice dated 06.11.2014 wherein the petitioner was called upon to furnish Form C in respect of which the petitioner had paid Central Sales Tax at concessional rate of duty under Section 8 of the Central Sales Tax Act, 1956. Though, notices were issued to the petitioner on the date mentioned above, the petitioner however failed to respond the same.

30. It is the case of petitioner that there was a fire accident in one of its godown on 13.08.2012 and a FIR was also lodged on the following day before the jurisdictional police station. It is further submitted that on 30.11.2015, the registered premises of the petitioner was completely inundated due to the flood and therefore the petitioner lost all the records and therefore the petitioner has no documents now to substantiate the claim at this point of time and at the time of filing of the present petitions.

31. It is not clear why the petitioner failed to furnish the records earlier to substantiate sale effected to register dealers outside the State against Form C. It is also not clear as to why, the petitioner did not respond to the notices issued earlier even though the respondent has filed documents/postal acknowledgments evidencing service of the respective notices issued to the petitioner calling upon the petitioner to file Form C.

32. From the documents that have been filed before this Court, what is discernible is that the petitioner has attempted to take advantage of alleged fire accident on 13.08.2012 in one of its godown and the flood that ravaged the city of Chennai in November-December, 2015 to its advantage.

33. However, barring an averment in the affidavit, there is no document to substantiate the fire accident. There is also no explanation forthcoming from the petitioner as to why the documents were not furnished earlier even though notices were served on the petitioner.

34. It is also not clear as to how the petitioner can state that it has no means to retrieve the records to substantiate any of the transactions. The Petitioner is not only a dealer under the provisions of the enactments but also an assessee under the provisions of the other tax enactments.

35. In the course of business, it is expected that it would have maintained records not only physically but also in demat form. Further, in the age of digitization and maintenance of electronic records and cloud computing, it is highly improbable that physical records allegedly lost either due to the fire accident on 13.08.2012 or during the flood that ravaged the City of Chennai between the last week of November 2015 and first three weeks of December 2015 cannot be retrieved.

36. Therefore, there was no excuse for the petitioner to not to file Form C. It cannot shy away from its statutory liability and responsibility to establish that the transactions in respect of which claimed concession Inter-State sale against Form C to registered dealers outside the State of Tamil Nadu and still not file the same.

37. At the same time, it is to be noticed that Section 22 of the Tamil Nadu Value Added Tax Act, 2006 was amended in the year 2012 with effect from 19.06.2012. As per Section 22 of the Tamil Nadu Value Added Tax Act, 2006, assessment in respect of a dealer shall be on the basis of return relating to turnover submitted in the prescribed manner and that the Assessing Officer was required to accept the return submitted for the year if the returns were filed in prescribed form and accompanied with the prescribed documents and the proof of payment of tax. Prior to 19.06.2012, Assessment Order was to be passed. However, in respect of the returns filed for the Assessment Years commencing from 2006-2007 to 2010-2011, where no Assessment Order had been a concept of deemed assessment was introduced as if the assessment was completed on 30.06.2012. Thus, there was a deemed assessment for the respective assessment years.

38. In the present case, though reassessment notice dated 28.12.2011 was served for the Assessment Year 2008-2009 to the petitioner, by virtue of the fiction introduced in proviso to Section 22 (2) of the Tamil Nadu Value Added Tax Act 2006, there was deemed assessment on 30.06.2012.

39. Similarly, for the subsequent Assessment Year 2009-2010, though a notice dated 06.11.2014 was served on the petitioner, there was deemed assessment in terms of sub-clause (2) to Section 22 of the said Act on 30.06.2012. The notices which were issued to the petitioner and the impugned orders

were predicated as if the assessments were to be completed under the old regime. As mentioned above, there was a deemed assessment for both the assessment years by virtue of the amendment in the said Act in the year 2012 on 30.06.2012.

40. Therefore, the respondent could only issue a notice under section 27 of the Tamil Nadu Value Added Tax Act, 2006 to revise the deemed assessment. However, the respondent has proceeded to pass the impugned orders dated 14.11.2016 and 08.12.2016 as if the old provisions were in force.

41. Therefore, the assessment in the impugned notices are liable to be quashed. At the same time, the impugned orders which stands quashed now by this order shall be treated as notice issued to the petitioner under section 27 of the Tamil Nadu Value Added Tax Act, 2006 for the respective assessment years. The respondent may also at its discretion issue appropriate corrigendum, if any, within a period of thirty (30) days from date of receipt of this order. The petitioner is given liberty to file appropriate reply and substantiate its case to articulate the correct basis to reopen the deemed assessment before the respondent by filing appropriate reply. This exercise shall be completed within a period of thirty (30) days thereafter.

42. The respondent shall thereafter endeavour to pass appropriate orders on merits in accordance with law after considering all the submissions of the petitioner within a period of ninety (90) days from the date of receipt of this order, since the dispute pertains to the Assessment Years 2008-2009 and 2009-2010.

43. These Writ Petitions stand disposed with the above observation. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

arb

To:

The Assistant Commissioner (CT),
Nandambakkam Assessment Circle,
No.17, Loganathan Street,
Choolaimedu, Chennai - 600 094.

+1cc to Mr.T.Pramodkumar, Advocate SR.No. 27759

+1 cc to special Government Pleader (Taxer) Sr.No. 27826

Pre-delivery Order in

W.P. Nos. 2083 and 2084 of 2017

RK(CO)

B.VC(16.07.2021)