BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2021
(Reserved on 14.07.2021)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.14252 of 2020
and
WMP(MD)No.11908 of 2020

Tvl.Maria Colours Lab
Represented by its Partner,
A.Collins ... Petitioner

vs.

1) The Commissioner of Commercial Taxes,
O/o The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2) The State Tax Officer(ST),
Thirunelveli Junction Assessment Circle
Commercial Tax Building,
Reserve Line Road,
Palayamkottai,
Thirunelveli District-627 002. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, calling for the records pertaining to the impugned proceedings of the 2nd respondent in TIN : 33515542100/2011-12 dated 02.03.2020 and quash the same.

For Petitioners : Mr.B.Rooban
For Respondents : Mr.P.Thilak Kumar
Government Advocate

ORDER

This writ petition has been filed for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned proceedings of the 2nd respondent in TIN : 33515542100/2011-12 dated 02.03.2020 and quash the same.

2.It is the specific contention of the learned counsel for the petitioner that the impugned revision of assessment order has been passed by the 2nd respondent Assessing Officer after the lapse of limitation period of 6 years to revise the assessment and therefore it is barred by limitation as provided under Section 27 of the TNVAT Act. According to the petitioner, the original assessment for the subject assessment year 2011-12 was completed on 31.10.2012 under Section 22(2) of the TNVAT Act and therefore, if at all any revision of assessment is initiated, the same has to be initiated before 31.10.2018. Thus, he would pray for setting aside the impugned order.

3.The 2nd respondent has filed counter affidavit. The learned Government Advocate appearing for the respondents would state that notice for revision of assessment was issued to the petitioner on 05.01.2018 well within the period of limitation through registered post vide postal receipt No.RT638516197IN dated 08.01.2018, but the petitioner had not filed any reply till the date of second final notice dated 07.08.2019 and inadvertently, issuance of first notice was not mentioned in the impugned order and the acknowledgment card for service of the first notice, could not be traced out due to administrative reasons. Thus, he would state that the impugned revision of assessment proceedings was initiated well within the period of limitation.

4.Heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondents.

5.In the present case, the impugned order refers to the notice for revision of assessment dated 07.08.2019 which is admittedly after the lapse of 6 years and 9 months. In the counter, it is averred that the first revision notice was dated 05.01.2018 which is admittedly not referred to in the impugned order and therefore, this Court directed the learned Government Advocate to produce the alleged proof of service, if any, available in respect of the first notice dated 05.01.2018, but in spite of several adjournments, he could not produce any proof as contended by the respondents in the counter. A postal receipt dated 09.01.2018 has been produced before this Court which does not indicate that the notice dated 05.01.2018 has been served on the petitioner. The respondents are also not able to produce the acknowledgment card. The impugned order also does not refer to any notice dated 05.01.2018. The impugned order of revision of assessment cannot be developed by the statement in counter which is well settled and therefore, I do not have any hesitation to hold that the impugned order is barred by limitation.

6.Accordingly, the impugned proceedings of the 2nd respondent in TIN : 33515542100/2011-12 dated 02.03.2020 are set aside and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1) The Commissioner of Commercial Taxes,
O/o The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2) The State Tax Officer(ST),
Thirunelveli Junction Assessment Circle
Commercial Tax Building,
Reserve Line Road,
Palayamkottai,
Thirunelveli District-627 002.

+1 CC to M/s.B.ROOBAN, Advocate (SR-23856[F] dated 26/07/2021)

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26.07.2021

RC (03.08.2021) 3P-4C