



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.10.2021

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.14494 of 2021

and

W.M.P(MD)No.11423 of 2021

Tvl.Pupa Lineraa,
Represented by its partner,
S.Pushpa Rajan.

...Petitioner

-Vs-

The State Tax Officer,
Karur-3 Division,
Karur.

... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records on the files of the respondent herein TIN:33513764575/2012-2013, dated 30.03.2021 and to quash the same.

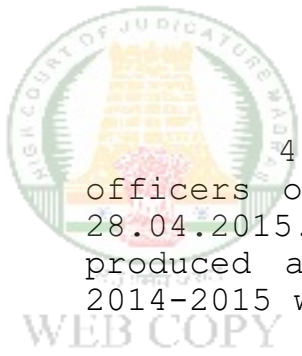
For Petitioner : Mr.N.Inbarajan
For Respondent : Mr.R.Suresh Kumar,
Government Advocate.

ORDER

The Prayer sought for herein is for a Writ of Certiorari, to call for the records on the file of the respondent herein TIN:33513764575/2012-2013, dated 30.03.2021 and to quash the same.

2. The petitioner is a registered dealer on the file of the respondent and was carrying on business of buying and selling Ceramic tiles and processing the broken tiles and sold them as border tiles. The petitioner claimed to have stopped the business activities including the process of broken tiles with effect from 01.06.2016. Accordingly, the registration granted under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the "TNVAT Act" in short) and under the Central Sales Tax Act, 1956 were cancelled by the proceedings dated 08.06.2016.

3. Insofar as the assessment year 2012-2013, the petitioner already filed a return and in view of Section 22(2) of the TNVAT Act, the said return deemed to have been accepted.



4. While that being so, there was an inspection by the officers of the Enforcement Wing of the respondent Department on 28.04.2015. During the inspection, the petitioner claimed to have produced all the documents and accounts right from 2010-2011 to 2014-2015 which were verified by the inspecting authorities.

5. However, thereafter, an order has been passed on 30.09.2016, under Section 22(4) of the TNVAT Act, where on satisfying with the documents produced by the petitioner/dealer, there has been a NIL balance of the tax payable by the petitioner and accordingly, the said order was passed on 30.09.2016.

6. However, now all of a sudden, the respondent has issued a show cause cum proposal for a revision of tax for the year 2012-2013 on 22.02.2021. Pursuant to the said notice and proposal dated 22.2.2021, the petitioner had given reply on 25.03.2021, where the petitioner had stated that the petitioner had closed the business on 01.06.2016 itself and the registration number under TNVAT Act itself was cancelled. Hence, the petitioner requested to drop further proceedings pursuant to the notice, dated 22.02.2021.

7. However, the respondent, without taking into account of the said request made by the petitioner or by rejecting the said contention of the petitioner/dealer, has issued the impugned revised assessment order under Section 27 of the TNVAT Act on 30.03.2021, which is now been challenged by the petitioner in the present writ proceedings.

8. Assailing the said impugned order, dated 30.03.2021, among various other grounds on merits of the case, as a preliminary ground, Mr.N.Inbarajan, learned counsel appearing for the petitioner has raised a point that the impugned revised assessment under Section 27 of the TNVAT Act, is barred by limitation.

9. In this context, the learned counsel relied upon Section 27 (1) (a) of the TNVAT Act, which reads thus:

"Section 27. Assessment of escaped turnover and wrong availment of input tax credit.-(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 (3), at any time within a period of (six years from the date of assessment), 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."

10. Therefore, as per the said provision, if at all any revised assessment to be made for the alleged escaped turnover or



wrong availment of ITC i.e., Input Tax Credit, within six years period from the date of assessment, it should be determined to the best of its judgment, the turnover which has escaped assessment and the tax can be assessed.

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11. By relying upon this provision, the learned counsel would further contend that, insofar as the six years limitation is concerned, which would start from 31st October 2013, the reason being that, the assessment relates to assessment year 2012-2013. Therefore, for the said assessment year, the return had been filed by the petitioner and by virtue of the deeming provision available under Sub-Section 2 of Section 22 of the TNVAT Act, by 31st October of the succeeding year, every dealer shall be deemed to have been assessed provided if the returns are in the prescribed form and accompanied with the prescribed documents and proof of payment of tax.

12. Therefore, the learned counsel would contend that in this case, since it is assessment year 2012-2013, as per the deeming provision under Section 22(2) of the TNVAT Act, by 31st October 2013, the petitioner deemed to have been assessed. Therefore, the assessment was over insofar as the petitioner is concerned for the said assessment year. Hence, according to the petitioner's counsel, the limitation as prescribed under Section 27 (1) (a) of the TNVAT Act would commence from 1st November 2013. In that case, the six years limitation period would be over by 31st October 2019, whereas in the present case by invoking Section 27 of the TNVAT Act, the respondent issued notice on 22.02.2021. Therefore, it is certainly beyond the limitation of six years. Hence, on that ground alone the invocation of Section 27 of the TNVAT Act which culminated in the impugned order is vitiated. Therefore, the learned counsel appearing for the petitioner seeks indulgence of this Court against the impugned revised assessment.

13. Per contra, Mr.R.Sureshkumar, learned Government Advocate appearing for the respondent would contend that, under Sub-Section 4-A of Section 2 of the TNVAT Act, which has been amended or inserted subsequently, the word "assessment" has been defined that, "assessment" means an assessment made or deemed to have been made under this Act and includes a re-assessment or revision of assessment.

14. By relying upon this definition clause, the learned Government Advocate would contend that, the assessment within the meaning of Section 2 (4-A) is concerned, it is not confined only with the assessment made under Section 22(2) of the TNVAT Act by way of even the deemed assessment but also includes the re-assessment made under Section 22(4) of the TNVAT Act.

15. In this context, the learned Government Advocate would contend that, insofar as the petitioner's case is concerned,

<https://hccs.ceramics.gov.in/tocsvd>



such a re-assessment has been made on 30.09.2016. Therefore, if at all the limitation for invoking Section 27 of TNVAT Act to start, it should be started only from the said date i.e., 30.09.2016. In that case, the notice issued under Section 27(1) of the TNVAT Act, dated 22.02.2021, is saved by the limitation and therefore, the said ground raised by the petitioner's counsel cannot be countenanced, he contended.

16. In support of his contention, learned Government Advocate has relied upon two decisions of the Hon'ble Supreme Court. The first decision is **(1977) 1 SCC 703** in the matter of **Deputy Commissioner of Commercial Taxes Vs. H.R. Sri Ramulu**. He relied upon the following observations made by the Hon'ble Supreme Court in this context:

"7.The short question which arises for determination in these appeals is that in the event of an order having been made under section 12-A of the Act, what is the starting point for computing the period of four years, mentioned in section 21 (3), for the exercise of the powers under section 21(2). Is it the initial assessment order or is it the order made under section 12A ? In the context of the present case, the question to be answered is as to whether the period of four years is to be calculated from March 21, 1963 when the initial assessment orders were made, or from June 8, 1966 when the orders under section 12-A of the Act were made. So far as this question is concerned, we are of the opinion that the period of four years should be calculated from June 8, 1966, i.e., the date on which orders under Section 12-A of the Act were made. The reason for that is that once an assessment is reopened, the initial order for assessment ceases to be operative. The effect of reopening the assessment is to vacate or set aside the initial order for assessment and to substitute in its place the order made on reassessment. The initial order for reassessment cannot be said to survive, even partially, although the justification for reassessment arises because of turnover escaping assessment in a limited field or only with respect to a part of the matter covered by the initial assessment order. The result of reopening the assessment is that a fresh order for reassessment would have to be made including for those matters in respect of which there is no allegation of the turnover escaping assessment. As it is, we find that in the present case the assessment orders made under section 12-A were comprehensive orders and were not confined merely to matters which had escaped assessment earlier. In the circumstances, the only orders which could be the subject-matter of revision by the appellant were the orders made under section 12-A of the



Act and not the initial assessment orders.

8. In the case of *J. Jagannathan Rao Vs. CIT and Excess Profits Tax, Andhra Pradesh* this Court dealt with section 34 of the Indian Income-tax Act, 1922 which relates to reassessment in the case of income escaping assessment. It was held by this Court that once assessment is reopened, the previous underassessment is set aside and the whole proceedings start afresh. Ramaswami, J. speaking for the Court observed:

"Section 34 in terms states that once the Income-tax Officer decides to reopen the assessment he could do so within the period prescribed by serving on the person liable to pay tax a notice containing all or any of the requirements which may be included in a notice under section 22(2) and may proceed to assess or reassess such income, profits or gains. It is, therefore, manifest that once assessment is reopened by issuing a notice under sub-section (2) of section 22 the previous underassessment is set aside and the whole assessment proceedings start afresh. When once valid proceedings are started under section 34(1)(b) the Income tax Officer had not only the jurisdiction but it was his duty to levy tax on the entire income that had escaped assessment during that year."

9. In the case of *Commissioner of Sales Tax, Madhya Pradesh v. H.M. Esufali H.M. Abdulali* this Court dealt with reassessment made under section 19 of the Madhya Pradesh General Sales Tax Act, 1958. It was held that when reassessment is made, the former assessment is completely reopened and in its place fresh assessment is made. Hegde, J. speaking for the Court observed:

"What is true of the assessment must also be true of reassessment because reassessment is nothing but a fresh assessment. When reassessment is made under section 19, the former assessment is completely reopened and in its place fresh assessment is made. While reassessing a dealer, the assessing authority does not merely assess him on the escaped turnover but it assesses him on his total estimated turnover. While making assessment under section 19, if the assessing authority has no power to make best judgment assessment, all that the assessee need do to escape reassessment is to refuse to file a return or refuse to produce his account books. If contention taken on behalf of the assessee is correct, the assessee can escape his liability to be reassessed by adopting an obstructive attitude. It is difficult to conceive that such could be the position in law."

10. In *International Cotton Corpn. (P) Ltd. v. Commercial Tax Officer, Hubli*, this Court held that once



an assessment order had been rectified and it was sought to make a further rectification of that order, the period of limitation for making such further rectification would commence not from the date of the original assessment order but from the date of the earlier rectification order. Alagiriswami, J. speaking for the Court in this context observed:

"The other attack that the rectification order is beyond the point of time provided in Rule 38 of the Mysore Sales Tax Rules is also without substance. What was sought to be rectified was the assessment order rectified as a consequence of this Court's decision in Yaddalam's case. After such rectification the original assessment order was no longer in force and that was not the order sought to be rectified. It is admitted that all the rectification orders would be within time calculated from the original rectification order. Rule 38 itself speaks of 'any order' and there is no doubt that the rectified order is also 'any order' which can be rectified under Rule 38."

Although the above case related to an order which had been subsequently rectified, the principle laid down therein would, in our opinion, be also applicable in cases where reassessment is made on the ground that certain amounts of turnover had escaped assessment."

17. Similarly, he also relied upon yet another decision of the Hon'ble Supreme Court reported in **(1987) 1 SCC 684** in the matter of **Kundan Lal Srikishan, Mathura (U.P) Vs. Commissioner of Sales Tax, U.P.**, where it has been held that, on re-assessment or rectification, period of limitation would run from the date of such order and not from the date of the original assessment order. By relying upon these two decisions, the learned Government Advocate would content that the law laid down by the Hon'ble Supreme Court in the said two cases cited supra would strengthen the argument of him that if the limitation point can be raised, it shall start only from the re-assessment that has been made only in the year 2019 and not from the original deemed assessment from 31.10.2013. Therefore the learned counsel would contend that the impugned proceedings which culminated in the revised assessment order under Section 27 of the TNVAT Act is to be sustained.

18. I have considered the rival submissions made by the learned Counsel appearing for both the parties and have perused the materials placed before this Court.

19. It is the contention of the learned counsel appearing for the petitioner that once there is a deeming provision available under Section 23(2) of the TNVAT Act which in fact has been brought



in by way of amendment with effect from 19.06.2012 by Act No.23 of 2012, on completion of the 31st day of October of the succeeding year, there shall be a deemed assessment and once deemed assessment is over, the question of re-assessment does not arise. Hence, even within the meaning of sub-Section (4-A) of Section 2 of the TNVAT Act, for all practical purposes, especially for the purpose of calculating the limitation, the word "assessment" would denote only the assessment made under Section 22 (2).

20. The learned counsel would further contend that, if at all no notice was issued within the period before 31st October of the succeeding year on any return filed by the assessee like the petitioner/dealer, in that case what shall be the final order to be passed under Section 22(2) or 22 (4), then it can be stated that such final assessment can be treated as an assessment for the purpose of calculating the limitation to invoke Section 27 of the TNVAT Act.

21. If we develops the said argument made by the learned Counsel appearing for the petitioner, this Court, on having a close reading of the provisions, namely, Section 22 (2) and 22(4), is of the view that, after the amendment, Section 22(2) reads thus:

"The assessing authority shall accept the returns submitted for the year, by the dealer, if the returns are in the prescribed form and accompanied with the prescribed documents and proof of payment of tax. Every such dealer shall be deemed to have been assessed for the year on the 31st day of October of the succeeding year.."

22. While making amendment of Sub- Section 2 of Section 22 of the TNVAT Act, the following reasons have been given by the Legislature as Statement of Objects and Reasons, where it has been stated that, in the Value Added Tax Acts of many other States, such a requirement of passing an assessment order is not found, and instead, deemed assessment on filing of returns by the dealers is being followed, so that, at any time, within the period of limitation, without loss of time, the escaped revenue is assessed by way of revision. It is further stated in the Statement of Objects and Reasons by the Legislature that, in tune with the general principles of the Value Added Tax and the provisions contained in the Value Added Tax Acts of other States, the Government have decided to dispense with the existing procedure of passing an assessment order by the assessing authority and to replace it with a system of deemed assessment. Under the proposed system of deemed assessment, a dealer shall be deemed to have been assessed if the returns are filed as prescribed.

23. If we take up the said Objects and Reasons given for such amendment into aid, the intention of Legislature to make an



amendment of Section 22 (2) of the TNVAT Act is to close the chapter by giving a deeming provision and once the dealer filed return in the prescribed form and accompanied with the prescribed documents and proof of payment of tax, every such dealer shall be deemed to have been assessed for the year on the 31st day of October of the succeeding year.

24. Here in the case in hand, admittedly, return has been filed by the petitioner/dealer on and before 31st October 2013, since it is a succeeding year for the assessment year 2012-2013. Since, no notice has been issued on the alleged reason that the return has not been filed in the prescribed form by the petitioner/dealer and 31st day of October 2013, also passed, on such date, the deeming provision has to be given effect to and accordingly, the petitioner has to be treated as deemed assessee for the year 2012-2013.

25. Once the dealer is assessed under the deeming provision and under Sub Section 2 of Section 22 of the TNVAT Act, then, whether there can be any scope for the Assessing Authority to once again reassess it by invoking the Sub Section 4 of Section 22 of the TNVAT Act itself is a question.

26. In this context, even though such an attempt has been made in respect of the petitioner some time in 2019 where a Nil tax due has been made by order dated 30.09.2016, on further close reading of Section 22(4) of the TNVAT Act, this Court is of the view that, once the dealer is deemed to have been assessed for a particular assessment year on completion of the 31st October of the succeeding year, it means that, the assessment has been made with all respects including the return are filed in prescribed form and accompanied with the prescribed documents and proof of payment of tax.

27. Therefore, for the very same reasons under Sub Section 4 of Section 22 of the TNVAT Act, the assessing authority cannot reopen it saying that the dealer to the best of its judgment can be once again assessed.

28. Moreover, insofar as Section 27 (1) (a) is concerned, the reasons for revising assessment is something different than of the re-assessment as contemplated under Section 22(4) of the TNVAT Act.

29. In Section 27 (1) (a) if the dealer has escaped assessment to tax, the Assessing Authority may at any time within a period of six years from the date of assessment 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. In such circumstances, Section 27 of the revised assessment is a different proceedings than the one of section 22(4) of the TNVAT Act. Section 22(4) proceedings if at all to be made, it can be made



only within the limitation i.e., within the period before the deeming clause come into effect i.e., on or before 31st day of October of the succeeding year. Otherwise, if we construed this provision in different manner to state that after the 31st day of October of the succeeding year, once the deeming assessment is made, then it is open to the Assessing Officer to invoke Section 22(4), then the ingredients made in Section 22(4) may not be available to the Assessing Officer, because the words "the return filed is incomplete or incorrect or if not accompanied with any of the document prescribed or proof of payment of tax", cannot once again be restated, since the deeming assessment once comes into effect and accepted it is presumed that such deeming assessment has been made or accepted only after accepting the return submitted by the dealer accompanied with the prescribed documents and proof of payment of tax.

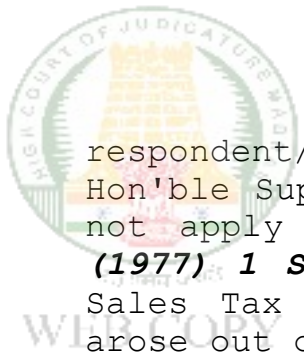
30. Therefore, once the deeming assessment is made, that can be treated as an assessment, but before the deeming assessment is made or accepted, Section 22(4) of the TNVAT Act can very well be invoked and in that case the dealer can be assessed to the best of its judgment by the Assessing Officer and if anything is done under Section 22(4) of the TNVAT Act before 31st October of the succeeding year of the concerned assessment year, then the re-assessment order or the assessment order made under Section 22(4) of the TNVAT Act can be treated as assessment within the meaning of Section 2 (4-A) of the TNVAT Act and the limitation of six years under Section 27 (1) (a) of the TNVAT Act can also start from that assessment.

31. However, here in the case in hand, there has been a deemed assessment for the assessment year 2012-2013. Insofar as the petitioner/ dealer which was over by the 31st October 2013.

32. Thereafter, if at all any revision has to be made on the alleged reason of escaped turnover by invoking Section 27 (1) (a) of the Act, such action can be initiated by the Assessing Officer by way of revised assessment to issue a show-cause notice, but strictly following the six years limitation period, which would start from the original deeming assessment date i.e., 31st October of the succeeding year.

33. In this Context, the original deeming assessment for the assessment year 2012-2013 of the dealer i.e., the petitioner is 31st October 2013, from that date if we calculate the limitation of six years as contemplated under Section 27 (1) (a) of the TNVAT Act that ends by 31st October 2019, whereas the notice under Section 27 (1) (a) of the TNVAT Act was issued only on 22.02.2021. Therefore, certainly it is beyond the limitation of six years.

34. In this context, even though an attempt has been made by the petitioner's Counsel, Government Advocate appearing for the



respondent/revenue by citing the afore cited two decisions of the Hon'ble Supreme Court, this Court feels that, the two decisions may not apply to the present facts of the case for the reason that **(1977) 1 SCC 703** (cited supra) decision arising out of the Mysore Sales Tax Act, 1957 and **(1987) 1 SCC 684** (cited supra) decision arose out of U.P.Sales Tax Act, 1948.

35. In these two cases, such kind of deeming provisions as that of under Section 22 (2) of the TNVAT Act either was not available or has not been dealt with.

36. No doubt, if there is no deeming provision as available under Section 22(2) of the TNVAT Act which we have discussed herein above, certainly what was the last assessment made by the revenue would be taken into account for the purpose of calculating the limitation for invoking the revised assessment under Section 27 of the TNVAT Act.

37. This position would have been possible prior to the amendment made in the year 2012 under which the deeming provision has been inserted in Sub-Section 2 of Section 22 of the TNVAT Act.

38. Once a deeming provision comes into effect, for every assessment year, 31st October of the succeeding year is to be taken as a date where deeming provision comes into effect and every such return filed by the assessee within the time should be treated as a deemed assessment.

39. But, before the expiry of the deeming assessment period, the revenue wanted to invoke the best judgment theory by invoking Section 22(4) of the TNVAT Act that would be possible for the revenue. However, once the deeming assessment is completed at the end of 31st October of the succeeding year, then that date shall be construed as an assessment date for the purpose of taking the limitation of six years for invoking the proceedings of revised assessment under Section 27 (1) (a) of the TNVAT Act.

40. In that view of the matter, this Court feels that there is every force in the said contention raised by the learned counsel appearing for the petitioner. However, the submission made by the learned Government Advocate may not hold good because of the reasons stated hereinabove. Hence, this Court is of the considered view that the impugned assessment order, which in fact started with a show-cause notice, dated 22.02.2021, since was issued beyond the six years limitation period as prescribed under Section 27 (1) (a) of the TNVAT Act, is unsustainable.

41. In these circumstances, this Court has no hesitation to hold that the impugned assessment order is unsustainable and accordingly it is liable to be interfered with. Hence the impugned



order is set aside and the Writ Petition is allowed. However, there will be no order as to costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (T&P)

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// True Copy //

/ /2022

Sub Assistant Registrar(CS)

lr/vsm

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,
Karur-3 Division,
Karur.

+1 CC to M/s.N. INBARAJAN, Advocate (SR-32903[F] dated 27/10/2021)

+1 CC to M/s.SPL.GP (SR-33027[F] dated 28/10/2021)

W.P. (MD) No.14494 of 2021
and

W.M.P (MD) No.11423 of 2021

Dated:
27.10.2021

ARK (CO)
KB(16.02.2022) 11P 4C