BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2021

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.(MD)No.15458 of 2020 and
WMP(MD) No.12976 of 2020

Tvl.Thalapathy Consruction,
Represented by its Partner,
B.Venkatesh, aged about 48 years,
S/o V.Balakrishnan,
No.21, Gopalsamy Nagar,
Pasumalai,
Madurai - 625 004. 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 Assistant Commissioner (ST),
Madurai Rural(South) Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai - 625 020. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for records pertaining to the impugned proceedings of the second respondent in TIN:33615163357/2007-08 dated 16.07.2019 and quash the same.

For Petitioner : Mr.Raja Karthikeyan
For Respondents : Mrs.J.Padmavathy Devi,
Special Government Pleader

O R D E R

This Writ Petition has been filed by the petitioner to quash the impugned order of the second respondent dated, 16.07.2019, passed in TIN:33615163357/2007-08.

2.The brief facts of the case are as follows:
The petitioner is the partner of Tvl.Thalapathy Construction and Tvl.Thalapathy Construction is a registered assessee with the second respondent. According to the petitioner, the second respondent has passed the original assessment order dated 02.09.2009, under Section 22(2) of the TNVAT Act. Subsequently, the second respondent has issued a notice dated 08.03.2019, proposing to revise the assessment, for the assessment year 2007-08.

2.1.The grievance of the petitioner is that in the notice dated 08.03.2019, there was a reference dated 16.08.2016, which is totally strange to the petitioner. The petitioner filed his detailed reply dated 01.04.2019, denying the allegations made by the second respondent. In his reply, the petitioner has also stated that since the proceeding to revise the assessment has been initiated after a lapse of 9 ½ years from the date of original assessment order, the same is clearly hit by limitation.

2.2.The learned counsel for the petitioner would submit that the original assessment order has been passed by the second respondent on 02.09.2009 for the assessment year 2007-2008 and no revision of assessment under Section 27 of the TNVAT Act shall be made after five years. He would further submit that even as per the amended provision of Section 27 of the TNVAT Act, dated, 19.06.2012, the limitation of 6 years expires on 01.09.2015 itself and he would reiterate that the entire revision of assessment proceedings initiated 9 ½ years after the date of original assessment is barred by limitation and is liable to be quashed.

3. A detailed counter affidavit has been filed by the learned Special Government Pleader, wherein, it was stated that the deemed assessment order under Section 22(2) of the TNVAT Act 2006 was passed for the assessment year 2007-2008, as per amendment issued in CT/GEGN/B1.Dept GO.Ms.No.83 dated 18.06.2012. It is further stated that the revision of assessment notice was issued on 16.08.2016, based in the report of the Accountant General Audit. Since no reply has been filed by the petitioner the notice was kept pending.

4.The learned Special Government Pleader would further submit that as per the Circular No.32/2015 (D3/25058/2015) Dated 17.08.2015, a fresh revision on assessment notice was issued on 16.07.2019. The revision of assessment order has been passed within the time limit prescribed and as per provisions of the TNVAT Act and in accordance with law. Hence, there is no need to interfere with the impugned order.

5.Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents.

6.Admittedly, the assessment order was passed on 02.09.2009. As per Section 27 of TNVAT Act, maximum period for revision shall be five years and even as per the amended provision, the maximum period for revision shall be six years from the date of assessment order. In the present case on hand. It is the specific contention of the petitioner that the notice said to have been issued by the respondents on 16.08.2016 was not served on him and the respondent is also not able to substantiate the service of notice on the petitioner. The learned counsel for the respondent would attempt to state that the petitioners did not give reply to the notice and therefore file was kept pending and fresh notice was given on 16.07.2019 based on the Circular No.32/2015 (D3/25058/2015) Dated 17.08.2015. Such a plea of the respondent cannot be accepted. The learned counsel for the petitioner relied on the judgment of the Division Bench of this Court in M/s. M.U.A. Arumugaperumal and Sons Vs.Additional Commercial Tax Officer (FAC), Srivilliputhur [2008 (16) VST 188 (Mad)] has categorically found that revising the assessment order after the time limit provided under statute is barred by limitation. The said decision will squarely apply to the case on hand. Since, the revision was made after a period of 9 ½ years, it is barred by limitation as per Section 27 of TNVAT Act.

7.Accordingly, the impugned order dated 16.07.2019 passed in the proceedings in TIN:33615163357/2007-08 by the second respondent is set aside and the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar(CS)

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.
vrn

To

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

2.The Assistant Commissioner (ST),
Madurai Rural(South) Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai - 625 020.

1CC TO MR. B.ROOBAN, ADVOCATE SR 15727
1CC TO THE SPL GOVT PLEADER SR 15615

Order made in
W.P.(MD)No.15458 of 2020 and
WMP(MD) No.12976 of 2020
Dated 08.04.2021

GS (06.05.2021) 3P 5C