BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.18418, 18420, 18422 & 18423 of 2019

and

M.P.(MD)Nos.14837, 14838, 14841 & 14844 of 2019

Tvl.Sree Kaderi Ambal Mills Pvt. Ltd.,
Represented by its Director SV Pethaperumal,
Super B-3,
Industrial Estate,
Madurai. ... Petitioner in all W.Ps.

Vs

The Assistant Commissioner (CT),
Tallakulam Assessment Circle,
Commercial Tax Building,
Madurai. ... Respondent in all W.Ps.

Prayer in W.P.(MD)No.18418 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records in TIN No.33774880126/2007-08, dated 31.05.2019 issued by the respondent and quash the same as illegal and in violation of the principles of natural justice, without jurisdiction and barred by limitation as prescribed under Section 27(2) of the Tamil Nadu Value Added Tax, 2006 as it stood then.

Prayer in W.P.(MD)No.18420 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records in TIN No.33774880126/2008-09, dated 31.05.2019 issued by the respondent and quash the same as illegal and in violation of the principles of natural justice, without jurisdiction and barred by limitation as prescribed under Section 27(2) of the Tamil Nadu Value Added Tax, 2006 as it stood then.

Prayer in W.P.(MD)No.18422 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records in TIN No.33774880126/2009-10, dated 31.05.2019 issued by the respondent and quash the same as illegal and in violation of the principles of natural justice, without jurisdiction and barred by limitation as prescribed under Section 27(2) of the Tamil Nadu Value Added Tax, 2006 as it stood then.

Prayer in W.P.(MD)No.18423 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records in TIN No.33774880126/2010-11, dated 31.05.2019 issued by the respondent and quash the same as illegal and in violation of the principles of natural justice, without jurisdiction and barred by limitation as prescribed under Section 27(2) of the Tamil Nadu Value Added Tax, 2006 as it stood then.

For Petitioner : Mr.N.Sudalai Muthu
for Mr.S.Karunakar

For Respondent : Mr.S.Dhayalan
(in all W.Ps. Government Advocate

COMMON ORDER

Heard the learned counsel on either side.

2.Though the petitions are four in number, the petitioner in all the writ petitions is one and the same. The assessment years pertain to 2007-08 to 2010-11. The petitioner is a dealer registered with the respondent. Their assessments were finalised under Section 22(2) of TNVAT Act. There was an inspection of the petitioner's business premises on 19.11.2014. Certain discrepancies were noticed. Based on the same, pre-revision notices were issued to the petitioner. The petitioner offered his objections. Thereafter, the orders were passed. The said orders were questioned on the ground that personal hearing was not afforded to the petitioner. The matter was remanded to the file of the respondent. Thereafter, the respondent issued fresh notices and after affording an opportunity of personal hearing to the petitioner, passed the impugned orders. They are under challenge in these writ petitions.

3.The learned counsel appearing for the petitioner initially raised two contentions.

(a) the impugned proceedings are barred by limitation.

(b) though the petitioner had raised several contentions, the assessing authority chose to deal only with the point of limitation and did not consider the other contentions.

The petitioner's counsel wanted this Court to remand the matter to the file of the respondent and pass orders afresh in accordance with law.

4.During the course of hearing, the learned counsel submitted that he would not press the point regarding limitation. Even though the petitioner's counsel may not press the point regarding limitation, I deem it my duty to sustain the stand of the assessing officer that the proceedings are well within the limitation. I am constrained to enter into the discussion in this regard because I have come across quite a few orders passed by learned Judges, in which, similar argument anchored on limitation had been upheld. Since the assessment years pertain to 2007-08 to 2010-11, as per the statutory position, the date of assessment is deemed to be 30.06.2012.

5.Earlier, the period of limitation was five years. Subsequently, the provision was amended. At present, six years has been prescribed as the period of limitation. The argument that was originally advanced before me was that since the amendment came into force on 19.06.2012, for the proceeding assessment years, the earlier period of limitation, namely, five years should be applied. According to the petitioner, since the date of assessment is 30.06.2012, five year period expired on 30.06.2017. Since the pre-revision notices were issued on 27.02.2018, the proceedings are clearly hit by limitation. This was the original argument that was advanced by the learned counsel for the petitioner. He also produced some unreported decisions in support of his stand.

6.Post amendment, Section 27 (1)(a) of the Act reads as follows.

> "27.Assessment of escaped turnover and wrong availment of input tax credit:- 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."

Before amendment, the provision reads as follows:-

> "27.Assessment of escaped turnover and wrong availment of input tax credit:- 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 **"five years from the date of assessment order by the assessing authority**" 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."

7.The petitioner wants to have the cake and eat it too. If according to the petitioner, the amended period of limitation will not apply, then, he has to necessarily take the earlier position as it was and apply the same to the facts on hand. Only by virtue of the amendment, the date of assessment order came to be crystallized as 30.06.2012 on deemed basis. Any period of limitation will have a starting point. There cannot be computation of limitation without a starting point. If according to the petitioner, the starting point was 30.06.2012, then, he clearly comes under the post amendment position.

8.Looked at from any angle, the argument anchored on limitation cannot be accepted and I hold that the assessing officer rightly held that the proceedings have been initiated well within the limitation period of six years. The pre-revision notices pointed out several defects. Though the petitioner had given his objections, he had raised his contentions only as regards the defect regarding the process loss/invisible loss. Of-course, in the impugned order, the contention raised in this regard has not been dealt with. But as rightly pointed out by the assessing officer, the head of process loss/invisible loss represents only negligible value. The petitioner has not answered as regards the other major defects in the pre-revision notices. I therefore indicated to the petitioner's counsel that if he wanted to press this writ petition, I will have to confirm the impugned order in respect of the other heads and remand the matter only as regards the process loss/invisible loss.

9.The learned counsel submitted that he would rather avail his remedy before the appellate authority. Therefore, the writ petitions are disposed of by giving opportunity to the petitioner to avail the alternative remedy of appeal before the appellate authority. If the petitioner files such an appeal within three weeks from the date of receipt of a copy of this order, the appellate authority will entertain the same without reference to limitation and of-course, subject to the other formalities regarding pre-deposit. I make it clear that the issue of limitation stands foreclosed. The petitioner is at liberty to raise all other contentions open to him. Since the original assessment orders appear to have been filed along with the writ petitions, the petitioner is at liberty to file an appeal by enclosing the photocopies.

10.These Writ Petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

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.

To

The Assistant Commissioner (CT),
Tallakulam Assessment Circle,
Commercial Tax Building,Madurai.

+1 CC to M/s.SPL GP (SR-7236[F] dated 25/02/2021)
+4 CC to M/s.S.KARUNAKAR, Advocate (SR-7176[F] dated 25/02/2021)

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and
M.P.(MD)Nos.14837, 14838, 14841 & 14844 of 2019
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PK(CO)
KB(15.03.2021) 4P 7C