BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.17586 of 2014
and
M.P.(MD)No.1 of 2014

M/s.P.K.Mookanambalam & Co.,
Rep. by its Partner,
Mr.K.Arumugasamy,
No.21, Jawahar Street,
Gandhi Nagar,
Madurai-625 020. ... Petitioner

Vs

The Assistant Commissioner (CT),
Thallakulam Assessment Circle,
C.T.Buildings,
Dr.Thangaraj Salai,
Madurai-625 020. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the impugned Revision Notice in TIN No.33094880403/2006-2007 (January 2007 to March 2007), dated 05.09.2014 issued by the respondent and quash the same as illegal, arbitrary and without jurisdiction and also barred by limitation.

For Petitioner : Mr.K.Soundararajan
For Respondent : Mr.S.Dayalan
Government Advocate

ORDER

The petitioner was a dealer registered with the respondent. The case on hand pertains to the assessment year 2006-2007. The order under Section 22(2) of TNVAT Act, 2006 was passed on 10.10.2008. To revise the same, the impugned notice came to be issued on 05.09.2014. The same is under challenge in the writ petition.

2.The learned Government Advocate would contend that it is open to the respondent to revise the assessment within a period of six years.

3.I am unable to agree with the stand taken by the respondent. As rightly contended by the learned counsel appearing for the petitioner, Section 27(1)(a) of TNVAT Act, 2006, now prescribes a period of six years from the date of assessment for assessment of escaped turnover and wrong availment of input tax credit. Originally, the limitation period was fixed as five years. The amendment came into force only on 19.06.2012, vide Act 23 of 2012. The original assessment notice was made in October 2008 itself ie., before the amendment came into force. Therefore, the case on hand will have to be considered only under the pre amendment position. The issue turns on whether the amendment made in the year 2012 vide Act 23 of 2012 with effect from 19.06.2012 is prospective or retrospective. The issue is *no longer res integra*.

4.A learned Judge of this Court, vide order dated 23.01.2018 in W.P.(MD)No.32201 of 2017, held as follows:-

> "**6.** As noticed above, the original assessment order was passed on 10.06.2011, and the time limit of five years expires on 09.06.2016. Therefore, the assessment for the relevant year could not have been reopened and redone. The respondent cannot place reliance on the amendment to Section 27 of the TNVAT Act, which was brought about by Act 23 of 2012, with effect from 19.06.2012, and therefore, such amendment can be only on prospective. Hence, the respondent cannot state that the period of limitation is six years. This very issue was decided by the Court, in the case of **Universal Abrasives Vs. Commercial Tax Officer, Manali Assessment Circle, Chennai**, reported in **[(2014) 68 VST 386 (Mad)]**, which decision has attained finality, and accepted by the Department. Thus, on facts, the revision of assessment order is without jurisdiction, as it is barred by limitation".

5.Respectfully following the said decision, I hold that the limitation period expired in October 2013 itself and therefore, issuing the impugned notice on 05.09.2014 is squarely hit by the aforesaid statutory prohibition. The respondent did not have the jurisdiction to issue the impugned notice after the expiry of the limitation period. It stands quashed. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Thallakulam Assessment Circle,
C.T.Buildings,
Dr.Thangaraj Salai,
Madurai-625 020.

+1 CC to M/s.SPL GP (SR-5684[F] dated 17/02/2021)

+1CC to M/s.K.SOUNDARARAJAN, Advocate (SR-5808[F] dated 18/02/2021)

W.P.(MD)No.17586 of 2014
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RMI
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