BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :**26.07.2021**
CORAM:
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.24330 of 2019
and
W.M.P(MD)No.20947 of 2019

Tvl.Sun Reclaimery,
Rep. by its Partner R.Ramasamy ... Petitioner

Vs.

The State Tax Officer,
Thirupparankundram Assessment Circle,
Madurai – 20. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records on the file of the respondent in TIN No.33196231364/2007-08, dated 21.10.2019 and quash the same as illegal, without authority of law and barred by limitation as prescribed under Section 27(1)(a) of the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner : Mr.A.Chandrasekaran
For Respondent : Mr.P.Thilak Kumar,
Government Advocate

ORDER

This writ petition has been filed by the petitioner seeking for issuance of a Writ of Certiorari, calling for the records on the file of the respondent in TIN No.33196231364/2007-08, dated 21.10.2019 and quash the same as illegal, without authority of law and barred by limitation as prescribed under Section 27(1)(a) of the Tamil Nadu Value Added Tax Act, 2006.

2. The brief facts of the case are as follows:

(i)The petitioner is a dealer in Waste Oil and engaged in recycling waste oil and an assessee on the file of the respondent under the Tamil Nadu Value Added Tax Act, 2006 and the petitioner is regularly filing the monthly returns before the respondent herein and paying the tax. While the matter stood thus, the petitioner reported a total and taxable turnover of Rs.60,26,758/- for the assessment year 2007-08 and the same was accepted by the respondent. But, no order of assessment was passed accepting the returns. As per proviso to Section 22(2) of the TNVAT Act, as amended by the Amendment Act 23 of 2012, which came into effect from 19.06.2012, the petitioner's original assessment for the assessment year 2007-08 was deemed to be completed as on 30.06.2012.

(ii) The grievance of the petitioner is that for the assessment year 2007-08, the respondent issued a pre-revision notice dated 02.07.2013 and to the said notice, the petitioner submitted a detailed reply along with supporting documents and prayed to drop the proposals. The respondent also after going through the materials submitted by the petitioner dropped the proposals and passed an order on 27.09.2013 accepting the petitioner's objections. However, after five years of period, on 27.08.2019, issued a notice proposing to levy tax @ 12.5% on a turnover of Rs.1,05,453/- on the ground that as per TANGEDCO Desk Audit report for the year 2015-2016, the petitioner had made purchase for the month of May, 2007, to the turnover of Rs.1,05,453/-. To the said notice, the petitioner vide letter dated 24.09.2019 sought for time to submit their reply and objections. Subsequently, the respondent issued a revised notice dated 26.09.2019 without furnishing the TANGEDCO Desk Audit report for the year 2015-16, which is the sole basis for the proposed revision of assessment. To the said notice also, the petitioner filed his detailed objections vide letter dated 14.10.2019 stating that the revision of assessment under Section 27 of the TNVAT Act, is barred by limitation and relying on various judgments of this Court. However, the respondent without considering the objections raised by the petitioner, confirmed the proposals vide the impugned proceedings. Hence, this writ petition.

3. The learned counsel for the petitioner would submit that Section 27(1)(a) of the TNVAT Act, provides for the assessment of escaped turnover at any time within a period of six years from the date of order of final assessment by the assessing authority. However, in the petitioner's case, final assessment for the year 2007-08 under the TNVAT Act was deemed to be completed on 30.06.2012 as per proviso to Section 22(2) of the TNVAT Act as amended by the Amendment Act 23 of 2012, which came into effect from 19.06.2012 and therefore, as per the provisions of Section 27(1)(a) of the TNVAT Act, a revised order of assessment for the subject assessment year ie., 2007-08, if any, ought to have been passed on or before 30.06.2019 and not beyond that date. However, the order impugned in this writ petition is dated 21.10.2019 and the same has been passed after the expiry of the limitation prescribed under Section 27(1)(a) of the TNVAT Act and therefore, the same is liable to be set aside and prays for appropriate orders.

4. The learned Government Advocate is not able to dispute the contention of the writ petitioner.

5. The petitioner has challenged the impugned order mainly on the ground of limitation. Perusal of the records shows that the original assessment order for the year 2007-2008 was deemed to be completed on 30.06.2012 as per proviso to Section 22(2) of the TNVAT

Act as amended by the Amendment Act 23 of 2012 and any revision of assessment can be made only prior to 30.06.2012 as per Section 27(1)(a) of the TNVAT Act. However, the impugned order of assessment has been passed by the respondent on 21.10.2019 ie., after a lapse of more than seven years and the same is beyond the limitation period and therefore, the same is liable to be set aside.

6. In the result, the writ petition is allowed and the order of the respondent in TIN No.33196231364/2007-08, dated 21.10.2019, is hereby set aside. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AE)

// True Copy //

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Sub Assistant Registrar(CS)

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Note:
(ii) 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

1.The State Tax Officer,
Thirupparankundram Assessment Circle,
Madurai - 20.

+1 CC to M/s.SPL GP (SR-24023[F] dated 27/07/2021)

+1 CC to M/s.A.CHANDRASEKARAN, Advocate (SR-23968[F] dated 27/07/2021)

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