IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.27631 of 2007

Lakshmi Machine Works Limited
Rep. by Chief Financial Officer
R.Rajendran
SRKV post
Periyanayakkan Palayam
Coimbatore 641 020 .. Petitioner

Versus

1. Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench)
Coimbatore-641 020

2. The Assistant Commissioner (Commercial Taxes)
Central Assessment Circle II
Coimbatore-641 018 .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the 1st respondent in its proceedings in CTSA.No.321/2002 dated 24.11.2006 for TNGST 1991-1992 and quash the same as illegal and contrary to the principles of assessment.

For Petitioner	:	Mrs. Lakshmi Sriram
For Respondents	:	Mr. V. Prashanth Kiran Government Advocate (Taxes)

O R D E R

(Order of the court was made by R.MAHADEVAN, J.)

The Writ Petition is filed praying for issuance of a Writ of Certiorari, calling for the records of the 1st respondent in its proceedings in CTSA. No. 321 of 2002 dated 24.11.2006 for TNGST 1991-1992 and quash the same.

2. The petitioner company is engaged in manufacturing and

selling textile machinery and spares. They are a dealer registered under the provisions of the Tamil Nadu General Sales Tax Act (in short, the Act) on the file of the second respondent. For the assessment year 1991-1992, the petitioner submitted their return of income and it was accepted by the second respondent on 31.10.1994. Subsequently the second respondent initiated revised assessment proceedings and passed an order dated 03.12.2001 for the assessment year 1991-1992 making a revision of assessment under Surcharge Act at 12%. Originally, the petitioner was assessed under Surcharge Act at 10% and by the revision of assessment, the second respondent levied differential rate of tax at 2% raising an additional demand of Rs.4,02,813/-. Aggrieved by the order dated 03.12.2001, the petitioner filed A.P. No. 99 of 2001 before the Appellate Deputy Commissioner (CT), Coimbatore and it was allowed on 02.05.2002 holding that the rate of surcharge levied at 12% is unsustainable and the claim of the petitioner for assessment of surcharge at 10% is proper.

3. As against the order dated 02.05.2002 of the Appellate Authority, the second respondent filed C.T.S.A. No. 321 of 2002 before the first respondent-Tribunal. The Tribunal allowed the appeal filed by the second respondent on 24.11.2006, which resulted in the petitioner filing the present writ petition.

4. The learned counsel for the petitioner would contend that the revised assessment order dated 03.12.2001 passed by the second respondent is time barred. According to the learned counsel, Section 16 of the Act prescribes a time limit of five years for initiating assessment proceedings from the expiry of the year to which the tax related. In the present case, the assessment year in question is 1992-1993. The pre-revision notice dated 30.10.2001 was issued by the second respondent followed by an order dated 03.12.2001, revising the levy of surcharge at 12%. However, as per Section 16 of the Act, the time limit of five years expired on 31.03.1997 and therefore the entire revision proceedings are vitiated. In this context, the learned counsel for the writ petitioner placed reliance on the decision of the Division Bench of this Court in the case of M.U.A. Arumugaperumal and Sons vs. Additional Commercial Tax Officer (FAC), Srivilliputtur reported in (2008) 16 VST 188 (Mad) wherein it was held that the amendments made by introducing Act 22 of 2002 to Section 16 (1) (a) of the Act is prospective and not retrospective and the revision of assessment in that case as time barred. The learned counsel for the petitioner therefore prayed for allowing this writ petition by setting aside the order of the Tribunal.

5. On the above contentions, we have heard the learned Government Advocate (Taxes) appearing for the second respondent

and perused the materials on record.

6. It is not in dispute that the assessment proceedings for the assessment year 1991-1992 were completed by the second respondent on 31.10.1994. Subsequently, a revision was made by the second respondent by passing an order dated 30.07.1998, against which the petitioner has filed an appeal before the Appellate Authority. The revised proceedings dated 30.07.1998 is not the subject matter of this writ petition. This writ petition relates to the second revision made by the second respondent by issuing a notice of revision dated 30.10.2001, followed by a revised order dated 03.12.2001, revising the levy of surcharge from 10% to 12%. Assailing the order dated 03.12.2001, the petitioner has filed AP No. 99 of 2001 and it was allowed on 02.05.2002. However, on appeal by the second respondent in C.T.S.A. No. 321 of 2002, the order dated 02.05.2002 passed by the appellate authority was set aside.

7. Thus, the main point arises for consideration in this writ petition is as to whether the second order of revision dated 03.12.2001 passed by the second respondent is time barred or not. As per Section 16 of the Act, the five year period prescribed for initiating a revised assessment proceeding expired on 31.03.1997 itself. However, the second respondent issued a pre-revision notice on 30.10.2001, which itself is time barred. In an identical case, the Division Bench of this Court in M.U.A. Arumugaperumal and Sons vs. Additional Commercial Tax Officer (FAC), Srivilliputtur reported in (2008) 16 VST 188 (Mad) has observed as follows:-

> "9. From a bare reading of the provision, it is clear that the limitation period commences from the date of final assessment order. The said provision came into effect prospectively and not retrospectively. There is nothing in the amendment made to Section 16 (1) (a) that the same was intended to operate retrospectively. There is no dispute regarding the same. Therefore, the amended provision is not relevant. There is also no dispute that the revision of assessment is barred by limitation as early as on March 31, 2001, which is much before the introduction of amended provision of Section 16 (1) (a) by Amendment Act of 22 of 2002, which came into effect from July 1, 2002........"

8. The aforesaid order passed by the Division Bench of this Court squarely applies to the facts of this case. In this case also, the five year period prescribed for re-assessment, for the assessment year 1991-1992, expired on 31.03.1997. Therefore, the notice dated 30.10.2001 for revision of the levy

of surcharge and the consequential order dated 03.12.2001 revising the surcharge from 10% to 12% is barred by limitation prescribed under Section 16 (1) (a) of the Act.

9. Even though the revised order of assessment dated 03.12.2001 was passed based on other factual grounds relating to levy of surcharge for sales made within the local limits and municipal limits, we are not inclined to go into such a factual controversy in this writ petition. Suffice it to state that the entire revised assessment proceedings initiated by the second respondent is time barred and therefore, on this ground alone, the petitioner is entitled to succeed and the order passed by the first respondent/Sales Tax Appellate Tribunal on 24.11.2006 in CTSA No. 321 of 2002 is liable to be set aside and accordingly it is set aside.

10. In the result, the writ petition is allowed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kas/rsh

To

1.Tamil Nadu Sales Tax Appellate
Tribunal (Additional Bench)
Coimbatore-641 020

2.The Assistant Commissioner
(Commercial Taxes)
Central Assessment Circle II
Coimbatore-641 018

+1cc to the Special Government Pleader, S.R.No.11255

WP. No. 27631 of 2007

EV(CO)
CT 10/03/2022