IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.9891 of 2022
and
W.M.P.Nos.9607 & 9609 of 2022

M/s.Nyle Garments,
Represented by its Partner,
Mr.S.Dhurairaj,
1/223, Amman Thottam,
Kalampalayam,
Tirrupur - 641 666. ... Petitioner

Vs

1. The Assistant Commissioner (ST),
Anupparpalayam Assessment Circle
Tiruppur.

2. The Assistant Commissioner (ST)
Tiruppur Rural Assessment Circle,
Tiruppur. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the impugned proceedings of the 1st respondent in TIN: 33702384791/2010-11 dated 07.02.2022 and quash the proceedings as barred by limitation and also passed contrary to the provisions of the TNVAT Act, 2006.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.C.Harsha Raj
Additional Government Pleader

ORDER

The petitioner was a dealer under the respondents governed by the erstwhile Tamil Nadu Value Added Tax Act, 2006 (in short 'the Act').

2. In respect of the assessment year 2010-11, in order to make the revised assessment for reversal of ITC invoking Section

19(15) of the Act, notice was issued, according to the petitioner, only on 08.01.2021. Thereafter, seven notices were issued, all those notices were responded by the petitioner by raising a ground that, it is barred by limitation, because, the six years limitation prescribed under the Act since expires by 30.06.2018. The first notice since issued is only on 08.01.2021, the entire proceedings is vitiated because of the limitation, despite the said factor, the respondents only at the 7th notice dated 08.11.2021 in the reference column No.1 also mentioned as if that they issued notice earlier on 31.12.2014.

3.According to the petitioner counsel, no such notices have ever been served on the petitioner. Therefore, the claim made by the Revenue that, the notice dated 31.12.2014 was issued cannot be treated as a notice under the scrutiny of law and therefore, only the notice dated 08.01.2021 shall be taken into account, if that is taken into account, it is clearly barred by limitation, hence, the entire proceedings which is culminated in the impugned order dated 07.02.2022 is also vitiated, he contended.

4. However, Mr.C.Harsha Raj, learned Additional Government Pleader appearing for the respondents, on instructions, would submit that, the Revenue has in fact issued a notice on 31.12.2014 and a copy of the invoice is also available in that file. However, since it has been sent only by ordinary post proof as to whether such notice has been served on the petitioner dealer ordinarily cannot be established now by filing any proof or acknowledgment from him. However, the fact remains that, notice dated 31.12.2014 was issued by the Revenue, therefore the limitation is saved, hence, the proceedings cannot be assailed on the ground of limitation, he contended.

5. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

6. Since the only ground raised before this Court is the point of limitation, where, it is the definite case of the petitioner that, first time notice was issued only on 08.01.2021 and since it relates to the assessment year 2010-11, the limitation starts from 01.07.2012 and ends on 30.06.2018, therefore, it is barred by limitation.

7. Though it was a stand of the Revenue that, on 31.12.2014 a notice was issued, admittedly, there has been no proof in the hands of the Revenue to arrive a conclusion that, such a notice has been served on the petitioner.

8. It is the settled proposition that, unless and until, a communication or notice is ensured to be served on the

addressee, it cannot be treated as a notice or proceedings in the eye of law. Therefore, this Court can safely conclude that, there was no notice issued prior to 08.01.2021 notice. Therefore, the said 08.01.2021 notice is clearly barred by limitation, which ends on 30.06.2018, the impugned proceedings dated 07.02.2022 which is a culmination of said proceedings against the petitioner also is clearly barred by limitation and therefore, on that ground this Court is inclined to set aside the impugned order. Accordingly, the following orders are passed in this writ petition:

That the impugned order is set aside and the Writ Petition is allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Assistant Commissioner (ST),
   Anupparpalayam Assessment Circle
   Tiruppur.

2. The Assistant Commissioner (ST)
   Tiruppur Rural Assessment Circle,
   Tiruppur.

+1cc to Mr.P.Rajkumar, Advocate, S.R.No.27490

+1cc to the Special Government Pleader, S.R.No.27810

W.P.No.9891 of 2022

SR(CO)
SU(11/05/2022)