

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.01.2022

PRONOUNCED ON : 08.04.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.10118, 10132, 10122, 10125 & 10129 of 2019
and

WMP.Nos.10679,10683,10685, 10689 and 10692

M/s.Orient Fans

(Proprietor - M/s.Orient Paper and Industries
Limited)

represented by its Branch Commercial Incharge
No.24, Ethiraj Salai, Egmore,
Chennai 600 008.

... Petitioner in all W.Ps.

vs

The State Tax Officer,
(Backyear Assessment),
Egmore Assessment Circle,
Chennai.

... Respondent in all W.Ps.

Prayer in W.P.No.10118 of 2019 : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the respondent in his proceedings in TIN 33420441065/2006-07 and quash the impugned notice dated 19.02.2019.

Prayer in W.P.No.10122 of 2019 : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the respondent in his proceedings in TIN 33420441065/2007-08 and quash the impugned notice dated 22.02.2019.

Prayer in W.P.No.10125 of 2019 : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the respondent in his proceedings in TIN 33420441065/2008-09 and quash the impugned notice dated 20.02.2019.

Prayer in W.P.No.10129 of 2019 : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the respondent in his proceedings in TIN 33420441065/2009-10 and quash the impugned notice dated 28.02.2019.

Prayer in W.P.No.10132 of 2019 : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the respondent in his proceedings in TIN 33420441065/2010-11 and quash the impugned notice dated 28.02.2019.

For Petitioner : Mr.R.L.Ramani
Senior
Counsel for
Mr.B.Rav
eendran (in all W.Ps.)

For Respondent : Mr. Richardson Wilson
Addition
al Govt.Pleader (in all W.Ps.)

C O M M O N O R D E R

The petitioner has challenged the notice issued under Section 27 of the " Tamil Nadu Value Added Tax Act, 2006" (TNVAT Act, 2006 for the sake of brevity, convenience and clarity) to the petitioner on various dates as detailed below:

W.P.Nos.	Assessment Year	Date	Impugned Notice
10118/2019	2006-07	19.02.2019	Impugned notice issued for re-assessment based on circular No.3 of 2019 dated 18.01.2019 r/w Joint Commissioner's instructions dated 12.2.2019
10122/2019	2007-08	22.02.2019	Impugned notice issued for re-assessment based on circular No.3 of 2019 dated 18.01.2019 r/w Joint Commissioner's instructions dated 12.2.2019
10125/2019	2008-09	20.02.2019	Impugned notice issued for re-assessment based on circular No.3 of 2019 dated 18.01.2019 r/w Joint Commissioner's instructions dated 12.2.2019
10129/2019	2009-10	28.02.2019	Impugned notice issued for re-assessment based on circular No.3 of 2019 dated 18.01.2019 r/w Joint Commissioner's instructions dated 12.2.2019

W.P.Nos.	Assessment Year	Date	Impugned Notice
10132/2019	2010-11	28.02.2019	Impugned notice issued for re-assessment based on circular No.3 of 2019 dated 18.01.2019 r/w Joint Commissioner's instructions dated 12.2.2019

2. Appearing on behalf of the petitioner, learned counsel for the petitioner submits that this very issue came up for consideration before this Court in the case of Tvl.Victus Dyeings vs. The Assistant Commissioner (ST) in W.P.Nos.20925, 20930, 20932 & 20935 of 2019 dated 29.07.2019.

3. Learned Senior Counsel has placed reliance from paragraph Nos.17 to 23 from the said decision which reads as under:-

17. Therefore, the crux and gravamen of cases on hand is the term 'determine' occurring in Section 27(1)(a) of TNVAT Act. For the purpose of ascertaining the meaning of the term 'determine' occurring in Section 27(1)(a) of TNVAT Act, this Court took recourse to P.Ramanatha Aiyar The Law Lexicon - Second Edition. The term 'Determine' in W.P.Nos.20925, 20930, 20932 & 20935 of 2019 P.Ramanatha Aiyar The Law Lexicon- Second Edition reads as follows:

'Determine: To fix all boundaries of ; to mark off ; to separate to fix the determination of ; to limit ; to bound ; to bring to an end ; to fix the form or character of ; to shape ; to regulate ; to settle ; to prescribe imperatively ; to ascertain definitely ; to bring to a conclusion ; to settle by judicial sentence ; to decide.

Determine: 1. to settle or decide ; to come to a decision ; to lay down decisively or authoritatively ; 2. to put and end to ; 3. to ascertain definitely.

"DETERMINE". Travacancord Cochin General Sales tax Rules (1950) R.33. The use of the words "proceed to assess" and 'determine' would not lead to different consequences or result. S.T.Officer V. Yengar and Sons, AIR 1970 SC 311 at 313, 314.

A statutory power to a government department to determine questions does not enable it to legislate or make it an autocrat free to act as it pleases ; it must exercise, and act with discretion, and if that be not done in a bonafide manner the King's Bench can and will interfere. (Sroud)'

18. A perusal of the above reveals that the most relevant explanation of the term 'determine' in the factual setting and contextual backdrop of cases on hand, is 'proceeded to assess and determine would not lead to different consequences or result'. Interestingly, this explanation in the Law Lexicon has been given by drawing inspiration from Yengar and Sons case being S.T.Officer V. Yengar and Sons reported in AIR 1970 SC 311 in W.P.Nos.20925, 20930, 20932 & 20935 of 2019 311, which has been referred to in the P.Ramanatha Aiyar The Law Lexicon Second Edition. Therefore, the term 'determine' even as used in the context of fiscal law statute and even in the basis of judgments/case laws pressed into service by learned State Counsel would necessarily mean that the respondent should proceed to assess. What is of importance is proceeding to assess is qua writ petitioner dealer, as alluded to supra. In the considered view of this Court, 'proceeding to assess' qua writ petitioner dealer occurred only on 27.09.2018, when the revisional notice was issued. Therefore, taking the date of revisional notice as the reckoning date, it is clearly after six years from the date of assessment had elapsed. This Court hastens to add that, to test with exactitude, the date of service of revisional notice on writ petitioner is relevant. In cases on hand the exact date of service has not been set out in the case file, but that pales into insignificance as the very date of revisional notice is beyond the period of limitation. Obviously service of a notice on the notice cannot be prior to the date of the notice itself. Wharton's Law Lexicon Fifteenth Edition, with regard to determine reads as follows:

'Determine, that there may be a lis between the parties and they have to be heard before a final conclusion is arrived at by the Managing Director, S.K.Bhargava Vs. Collector Chandigarh, (1998) 5 SCC 170.

19. Interestingly, P.Ramanatha Aiyar The Law Lexicon- Second Edition and the term 'determine' as occurring therein has been taken recourse to, by a Hon'ble Supreme Court in Ashok Leyland case reported in [2004] 134 STC 473 [Ashok Layland Ltd. Vs. State of Tamil Nadu and another]. To be noted, Ashok Leyland case was rendered by a larger bench of Hon'ble Supreme Court and that was case dealing with 6-A of Central Sales Tax Act, 1956 Act, but this is being referred to for the limited purpose of saying that a larger Bench of Hon'ble Supreme Court has also relied on P.Ramanatha Aiyar The Law Lexicon- Second Edition for determining the dimensions and dynamics of the term 'determine'. In Ashok Leyland, paragraphs 75 to 77 are of relevance and the same read as follows:

'75. The word "determination" must also be given its full effect to, which presupposes application of mind and expression of the conclusion. It connotes the official determination and not a mere opinion or finding.

76. In Law Lexicon by P.Ramanatha Aiyar, Second Edition, it is stated :

"Determination or order. The expression 'determination' signifies an effective expression of opinion which ends a controversy or a dispute by some authority to whom it is submitted under a valid law for disposal. The expression 'order' must have also a similar meaning, except that it need not operate to end the dispute. Determination or order must be judicial or quasi-judicial. Jaswant Sugar Mills Ltd. V. Lakshmi Chand AIR 1963 SC 677, 680 [Constitution of India Art.136]".

77. In Black's Law Dictionary, 6th Edition, it is stated:

A 'determination' is a 'final judgment' for purposes of appeal when the trial Court has completed its adjudication of the rights of the parties in the action. Thomas Van Dyken Joint Venture Vs. Van Dyken 90 Wis, 236, 279 N.W.2d 459, 463.'

20. In the light of the narrative thus

far, this Court is of the considered view that reckoning date can at best be only the date of revisional notice i.e., 27.09.2018.

21. Owing to all that have been set out supra, this Court has no difficulty in coming to the conclusion that impugned assessment orders which are admittedly under Section 27 (1)(a) of TNVAT Act, are barred by limitation as contained in the very provision under which the revised assessments have been made i.e., Section 27(1)(a) of TNVAT Act, as the same have been determined after six years have elapsed from the date of assessment.

22. To be noted, limitation is based on public law principle and it is based on the public law principle that one cannot be kept guessing in eternity. This public law principle also enures in favour of the interpretation and the considered view this Court has taken.

23. Impugned assessment orders are set aside and the writ petitions are allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

4. Learned counsel further submits that for the assessment years 2006-07, 2007-08, 2008-09, 2009-10 and 2010-11, earlier assessment orders were passed on 24.09.2010, 18.03.2011 and on 30.06.2012 and thereafter the impugned notices have been issued long after the expiry of limitation prescribed under Section 27 of TNVAT Act, 2006.

5. As far as the Assessment Year 2009-10 and Assessment Year 2010-11 are concerned, the learned Senior Counsel for the petitioner submitted that there was deemed assessment in terms of Section 22(2) of the TNVAT Act, 2006 on 18.03.2011 and 30.06.2012 and therefore, the impugned notices issued beyond the period prescribed under Section 27 of TNVAT Act, 2006 were time barred and were liable to be quashed.

6. Explaining further, the learned Senior Counsel for the petitioner submits that there is a long delay in completing the assessment and therefore the impugned notices seeking to re-open completed assessment are therefore liable to be quashed.

7. It is submitted that after the petitioner replied to the notices for the Assessment Years 2006-2007, 2007-2008, 2008-2009, 2009-2010 & 2010-2011, there was no further response from the respondents and therefore the impugned notices for re-assessment under Section 27(4) of the Tamil Nadu Value Added Tax Act, 2006 in the year 2019 are liable to be quashed.

8. The learned Senior Counsel further submits that earlier notices and the impugned notices were issued by a different authority and therefore, on this score also, the impugned notices have to go.

9. As far as the impugned notice for the Assessment Year 2010-2011 is concerned, it was submitted that assessment was deemed to have been completed on 30.06.2012 by way of operation of law. It is therefore submitted that the limitation under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 expired in the year 2017 and therefore, the impugned notice was clearly time barred and without jurisdiction and therefore are liable to be quashed.

10. The learned Senior Counsel further additionally relied on the following decisions:-

- i. The Sales Tax Officer and Others Vs. Sudarsanam Iyengar and Sons, (1969) 2 SCC 396.
- ii. M.Gulam Mohideen Vs. The Commissioner of Agricultural Income Tax, Board of Revenue, Madras and Others, AIR 1978 Mad 327.
- iii. B.G.Natarajan Vs. The Deputy Commercial Tax Officer, Pollachi West, 1981 SCC OnLine Mad 453 : (1981) 48 STC 193.
- iv. M/s.Stanes Amalgamated Estates Limited Vs. The Commercial Tax Officer, dated 27.08.2013, in W.P.No.3175 of 2006.
- v. Tvl.Victus Dyeings Vs. The Assistant Commissioner (ST), Rural Assessment Circle, Tirupur, dated 29.07.2019 in W.P.Nos.20925, 20930, 20932 & 20935 of 2019.

11. The learned Senior Counsel further submits that under Rule 6(11) of the Tamil Nadu Value Added Tax Rules, 2007, the petitioner is required to maintain the records for a period of five years (later six years) and since the proceedings have been initiated long after the aforesaid period, the petitioner has also not maintained the records for the Assessment Years 2006-2007 to 2010-2011.

12. Opposing the prayer in these Writ Petitions, Mr.Richardson Wilson, the learned Additional Government Pleader for the respondent submits that Notices for the Assessment Years 2006-2007, 2007-2008, 2008-2009 were issued immediately on 30.09.2010 after the deemed assessment and subsequent Notices for these three assessment years were again issued on 30.11.2010.

13. It is further submitted that for the Assessment Year 2009-2010, after the original assessment was completed on 18.03.2011, a notice was issued on 31.03.2011 and for the Assessment Year 2010-2011, the impugned notices was issued on 28.02.2019.

14. It is therefore submitted that since the impugned notices have been issued in continuation of the earlier under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 and they were well within the time limit even in terms of the decision of the Hon'ble Supreme Court in Sales Tax Officer and Another Vs. M/s. Sudarsanam Iyengar and Sons, (1969) 2 SCC 396.

15. A specific reference was made to paragraph Nos.4 & 5 from the said decision which dealt with the scope of Rule 33 of the Travancore-Cochin General Sales Tax Rules, 1950 which according to the petitioner is pari materia with Section 27 of the Tamil Nadu Value Added Tax Act, 2006.

16. The learned Additional Government Pleader submits that the above view has not only been followed by this Court but also has been reiterated in Additional Assistant Commissioner of Sales Tax, Indore Region, Indore Vs. Firm Jagmohandas Vijay Kumar, (1970) 25 STC 74. A specific reference was made to paragraph No.4 from the said decision which reads as under:-

"4. It was argued on behalf of the appellant that the High Court erred in taking the view that the limitation provided under Section 10 of the Act has to be imported in all the assessments made under Section 8 of the Act and the High Court failed to appreciate that Section 10 provided a period of three years for "escaped turnover" and no turn over could be said to have escaped when once proceedings were properly initiated and were pending. It was contended for the appellant that the Sales Tax Authorities had jurisdiction to assess the respondent to sales tax for the year 1955-56 and the High Court was not right in holding that the assessment for that period was barred by time. In our opinion, the argument put forward on behalf of the appellant is well founded and must be accepted as correct. It is not disputed in the present case that the respondent was a registered dealer under the Act and on August 13, 1956 the Sales Tax Officer, Indore made an order of assessment under Section 8(1)(b) of the Act to the best of judgment on the ground that the respondent had failed to submit a return under Section 7(1) for the prescribed period. It is true that the assessment was set aside in revision on October 12, 1958 by the Commissioner of Sales Tax on the ground that the respondent had not been afforded an opportunity for

being heard. But the Commissioner of Sales Tax made a specific order of remand of the case to the Sales Tax Officer who was directed to make assessment after hearing the respondent afresh. Thereafter the Sales Tax Officer served on the respondent a fresh notice on November 29, 1958 under Section 8(1)(b) of the Act and the proceedings remained pending till the Sales Tax Officer again issued a notice on February 11, 1963. In these circumstances it is manifest that the proceedings for assessment had started by the issue of the notice on August 13, 1956 when the Sales Tax Officer made an assessment under Section 8(1)(b) of the Act and the proceedings remained pending after the Commissioner of Sales Tax quashed the assessment and remanded the matter to the Sales Tax Officer for giving a fresh notice to the respondent which in fact was given on November 29, 1958. We are therefore unable to accept the contention of the respondent that the case in one of escaped assessment and the period of limitation contemplated by Section 10 of the Act is applicable to the case. The reason is that once the proceedings for assessment are initiated under Section 8(1)(a) or (b) it cannot be said that the turnover has escaped assessment unless the proceedings have come to a close. In the present case, the proceedings were initiated after the respondent filed to submit a return and the Sales Tax Officer made an order of assessment under Section 8(1)(b) which was set aside by the Commissioner of Sales Tax in revision and the case was remanded back to the Sales Tax Officer for issuing a fresh notice under Section 8(1)(b) and making an assessment after giving an opportunity to the respondent to be heard. The proceedings for assessment have remained pending with the Sales Tax Officer and it is therefore not a case of escaped assessment and the provisions contained in Section 10 of the Act have no application to the case. The question has been the subject-matter of consideration by this court in a recent case — Ghanshyam Das v. Regional Assistant Commissioner of Sales Tax, Nagpur [(1964) 4 SCR 436] . The points which arose in that case for determination were: (1) when can a proceeding be said to

commence and (2) if a proceeding has commenced within the prescribed period but is pending when such period expires and an order is finalised therefore, whether such an order is invalid on the ground of its being time-barred. The appellant there was a registered dealer, carrying on business in bidis. For the year 1949-50 i.e. for the period from October 22, 1949 to November 9, 1950, he submitted only one return on October 5, 1950, for one quarter and defaulted in respect of the other quarters. He was served a notice on August 13, 1954, under Section 11(1) and (2) of the C.P. and Berar Sales Tax Act, 1947, in respect of the turnover for the said period. He filed the returns subsequently, but contended that the proceedings before the Sales Tax Commissioner were barred by time. He then filed a writ petition in the High Court challenging the said proceedings. For the year 1950-51 he had filed no return at all and was served a notice on October 15, 1954, under Section 11(4) of the Act. That notice was within three years from October 16, 1951, which fell within the fourth quarter of the year in question. The appellant later filed his returns under protest and contended that the assessment proceedings were barred by limitation under Section 11(a) of the Act. This plea was rejected and his tax liability was determined. The appellant then filed another writ petition for a similar relief for that year. The contention was that whatever may be said in respect of an unregistered dealer, in the case of a registered dealer the proceedings commence from the date of the registration certificate within which he has a statutory obligation to furnish his returns. It was held by this Court that assessment proceedings under the Act must be held to be pending from the time they are initiated until they are terminated by a final order of assessment. It was also held that in the case of a registered dealer there would be four variations in the matter of assessment of his turnover: (1) he submits a return by the date prescribed and pays the tax due in terms of the said return, the Commissioner accepts the correctness of the return and appropriates the amount paid towards the tax due for the period covered by the

return; (2) the Commissioner is not satisfied with the correctness of the return, he issues a notice to him under Section 11(2), but does not finalise the assessment; (3) the registered dealer does not submit a return, the Commissioner issues a notice under Section 10(3) and Section 11(4) of the Act; and (4) the registered dealer does not submit any return for any period and the Commissioner issues a notice to him beyond three years. It was held by this court that in the case of a registered dealer the proceedings before the Commissioner start factually when a return is made or when a notice is issued to him either under Section 10(3) or under Section 11(2) of the Act. It was held in the first case that the Commissioner had no jurisdiction to issue a notice under Section 11-A with respect to the quarters other than that covered by the return made by the appellant. In the second case the Commissioner had jurisdiction to assess the turnover in respect of the entire fourth quarter. At p. 450 of the report, the Court observed that in a case where a return has been made, but the Commissioner has not accepted it and has issued a notice for enquiry, the assessment proceedings would be pending till the final assessment is made. The court proceeded to observe that even in a case where no return has been made, but the Commissioner initiates proceedings by issuing the notice either under Section 10(3) or under Section 11(4), the proceedings would be pending till the final assessment is made. This decision therefore clearly lays down the principle that in the case of a registered dealer the proceedings before the Commissioner start factually when a return is made or a notice is issued and no question of limitation would arise where such proceedings are taken before the expiry of the prescribed period of three years though an assessment order is finalised after the expiry of such period. In other words, the assessment proceedings commence in the case of a registered dealer either when he furnishes a return or when a notice is issued to him under Section 11(4) or Section 10(3), and if such proceedings are taken within the prescribed time though the assessment is finalised subsequently even after the

expiry of the prescribed period, no question of limitation would arise. The view expressed by this court in Ghanshyam Das v. Regional Assistant Commissioner of Sales Tax, Nagpur has been followed by the court in two recent cases – Regional Assistant Commissioner of Sales Tax, Indore v. Malwa Vanaspati & Chemical Co. Ltd. [21 STC 431] and State of Punjab v. Murlidhar Mahabir Prasad [21 SC 29] in which the material facts are almost parallel to those in the present case. In view of the principle laid down by these decisions we hold that in the present case the proceedings for assessment to sales tax taken against the respondent for the year 1955-56 by the assessing authorities are legally valid and the respondent has made out no case for grant of a writ under Article 226 of the Constitution for quashing those proceedings or for quashing the notice issued on March 16, 1963 or the order of the appellant dated July 18, 1963”.

17. The learned Additional Government Pleader further submits that the only addition in the impugned notices was on account of proposals under Section 22(4) of the Tamil Nadu Value Added Tax Act, 2006 and therefore it cannot be said that the demand proposed in the impugned Notices were time barred. It is submitted that there is no restriction / limitation under Section 27 of the Tamil Nadu Valued Added Tax Act, 2006.

18. The learned Additional Government Pleader fairly concedes that the impugned notice for the Assessment Year 2010-2011 may be time barred, but, however, submits that the impugned notices for the respective assessment years were in time in terms of the decisions of the Hon'ble Supreme Court in M/s. Sudarsanam Iyengar and Sons case referred to supra as followed in Firm Jagmohandas Vijay Kumar case referred to supra.

19. The learned Additional Government Pleader for the respondent also submits that the Revenue Department has filed appeal against the order of the learned Single Judge in Tvl. Victus Dyeings case cited by the learned Senior Counsel for the petitioner. He further submits that though the issue in the said case, even on merits, is not applicable to the facts.

20. It is further submitted that in the present case, inspection was carried out on 16.12.2016 which culminated in the report of Enforcement Wing Report being given to the petitioner.

21. It is submitted that during the interregnum, the limitation in the relevant Assessment Year 2007-2008 to 2010-2011 expired after the expiry of the limitation for the first time, the Revenue issued notice on 27.09.2019 and in that context, the learned Single Judge in Tvl. Victus Dyeings case referred to supra concluded that the orders passed by the Assistant Commissioner (ST), Rural Assessment Circle, Tirupur was beyond the limitation.

22. The learned Additional Government Pleader for the respondent referred to the decision of this Court in Kurlon Enterprises Limited Vs. State Tax Officer, Chennai, (2021) 95 GSTR 274 (Mad) which was cited by the learned Senior Counsel for the petitioner and submitted that in the said case, the learned Single Judge has merely quashed the order and remitted the case back to the respondent.

23. The learned Additional Government Pleader submits that the observations in paragraph No.15 of the decision of the Bharat Steel Tubes Limited and Another Vs. State of Haryana and Another, (1988) 3 SCC 478 : (1988) 70 STC 122, the long delay is not in the interests of the assessee or the State and therefore, the petitioner should be directed to reply to the notices.

24. The learned Additional Government Pleader submits that for the purpose of Section 27 of the Tamil Nadu Value Added Tax Act, the Government has issued a Circular / Notification, pursuant to which, the respondent has issued the impugned notices and therefore merely because the notices issued by another officer of the same department by ipso facto will not mean that the impugned notices issued by the different officer under Section 27 of the Act contemplate the re-assessment by assessing officer as deposed in Section 2(5-A) of the Act.

25. It is therefore submitted that the impugned notices issued cannot be said to be time-barred as the impugned notices are in this continuation of earlier notices. As far as the two other assessments namely 2009-10 and 2010-11 are concerned, learned counsel for the respondents submits that after the assessment and the deemed assessment were made on 18.03.2011 and on 30.06.2012 notices were issued for the assessment year 2009-2010 on 31.03.2011 and therefore, the continuation of the proceedings initiated on 31.03.2011 cannot be said to be time barred on 28.02.2019.

26. By way of rejoinder, the learned Senior Counsel for the petitioner submits that the interpretation suggested by the learned Additional Government Pleader for the respondent regarding Section 24(2) of the Tamil Nadu Value Added Tax Act, 2006 cannot be accepted.

27. It is submitted the scheme of assessment under the Tamil Nadu Value Added Tax Act, 2006 and TNGST Act is similar. It is also submitted that if during the relevant Assessment Years incomplete return are filed provisional assessment would have been made under Section 22 of the Tamil Nadu Value Added Tax Act, 2006.

28. The learned Senior Counsel for the petitioner therefore submits that power to make assessment under Section 22(4) of the Tamil Nadu Value Added Tax Act, 2006 is available only for the period before the expiry of the period for completing the assessment.

29. In these cases, by virtue of operation of Section 27 (2) of the Tamil Nadu Value Added Tax Act, 2006, the assessment for the Assessment Year 2010-2011 has been completed on 30.06.2012. It is submitted that before the aforesaid day, the power to invoke Section 22(4) of the Act is available.

30. It is further submitted that once the deemed assessment is made, question of invoking Section 22(4) does not arise at all. The only option is available to the Assessing Authority to issue Notice under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 in case of escaped turnover.

31. It is further submitted that the additional features added in the impugned Notices are beyond the scope of scheme for re-assessment.

32. The learned Additional Government Pleader for the respondent submits that scheme of assessment under Section 22 (4) of the Act includes the re-assessment and therefore, re-opening or re-assessments opening does not arise for the assessee to state that the assessee cannot produce documents.

33. I have considered the arguments advanced by the learned senior counsel for the petitioner and the learned Additional Government Pleader. At the outset , I would like to would refer to the following chart:-

Assessment Years	Original Assessment completed	Time limit for re-opening of Assessment Expired	Notices issued for Re-assessment based on Inspection	Second Notice issued for Re-assessment	Reply filed with documents	Impugned Notices issued for re-assessment based on circular
2006-07	24.09.2010	19.02.2019	30.09.2010	30.11.2010	21.10.2010	23.09.2015

Assessment Years	Original Assessment completed	Time limit for reopening of Assessment Expired	Notices issued for Re-assessment based on Inspection	Second Notice issued for Re-assessment	Reply filed with documents	Impugned Notices issued for re-assessment based on circular
2007-08	do	22.09.2015	Do	DO	24.02.2011	23.09.2015
2008-09	DO	20.02.2019	Do	Do	28.03.2011	do
2009-10	18.03.2011	28.02.2019	31.03.2011	-	22.05.2011	17.03.2016
2010-11	30.06.2012	28.02.2019	-	-	-	29.06.2018

34. A reading of the above chart indicates that the first notices for reopening the assessment were issued on 19 & 20.2.2010 after the assessments were completed on 24.9.2010 for the assessment years 2006-07; 2007-08 and 2008-09. Thereafter, second notice was issued on 30.11.2010 for the respective assessment years.

35. The impugned notices have been issued for these three assessment years on 19.2.2019 , 22.0.2.2019 on 20.02.2019. Therefore, it cannot be said that these notices were issued beyond the period of limitation prescribed under section 27 of the Tamil Nadu Value Added Tax Act, 2006. The impugned notices are nothing but continuation of the earlier notices which were initiated within time.

36. As far as the impugned notice dated 28.2.2019 for the assessment year 2009-10 is concerned, again after completion of the assessment on 18.3.2011, a notice was issued for reopening of the assessment on 22.5.2011. Therefore, it cannot be said that the impugned notice dated 28.2.2019 for the aforesaid assessment year was time barred.

37. As far as the impugned notice dated 28.2.2019 for the assessment year 2010-11 is concerned, there was a deemed assessment on 30.6.2012 by the operation of law under proviso to section 22 (2) of the Tamil Nadu Value Added Tax Act, 2006.No previous notice for reopening of the assessment appears to have been issued. Therefore, the impugned notice dated 28.2.2019 seeking to reopen the deemed assessment completed on 30.6.2012 appears to be time-barred as no notice was issued within time and is therefore liable to be declared as time barred.

38. The decision of this court in W.P.Nos. 20925 of 2019 et cetera batch the case of Tvl.VictusDyings versus The Asst Commissioner (ST) vide order dated 29.7.2019 cited by the learned Senior Counsel is not applicable to the facts of the first four assessment years. In the said case, the notice for revising the assessment was issued for the first time after expiry of limitation as in the case of the petitioner for the assessment year 2010-11. The ratio in the said case at best can be applied for the assessment year 2010-11.

39. The other decision cited by the learned senior counsel for the petitioner do not further the case of the petitioner. Therefore, there is no merits in the challenge to the impugned notices barring notice dated 28.2.2019 for the assessment year 2010-11.

40. Therefore the assessment which was completed long after the period of limitation was held barred by law. This is not the case in the case of the petitioner. It is also not open to the petitioner to plead the helplessness by citing rule 6 (11) of the Tamil Nadu Value Added Tax Rules, 2007. As long as the notices for reopening of the assessment had been issued and re-assessment was not completed, it was incumbent on the part of the petitioner to have maintained the records. If the petitioner failed to maintain the records, petitioner has to face the consequences.

41. The respondent is therefore directed to complete the assessment of the assessment years 2006-07 to 2009-10 within a period of three months from date of receipt of this order. Needless, to state, before passing such orders, the petitioner shall be heard. All the issues are left open to be canvassed on merits by the petitioner. Petitioner is given an opportunity to file its reply within a period of 30 days from date of receipt of this order. In case the petitioner fails to file any reply or participate in the personal hearing, the respondent shall proceed to pass appropriate orders on merits and in accordance with law based on the available materials.

42. In the light of the above discussion, W.P.Nos.10118,10122,10125 & 10129 of 2019 are dismissed with the above observation. W.P.No.10132 of 2019 is however allowed. Connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

kkd

To

The State Tax Officer,
(Backyear Assessment),
Egmore Assessment Circle,
Chennai.

+1 cc to Mr.B.Raveendran, Advocate Sr.NO. 24632

+1 cc to Spl.Government Pleader Sr.NO. 24969

W.P.Nos.10118,10132,10122,
10125 & 10129 of 2019

SKM(CO)

A.SK(04/05/2022)