IN THE HIGH COURT OF JUDICATURE AT MADRAS

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| Reserved On | 11.01.2022 |
| Pronounced On | 08.04.2022 |

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.10835 of 2019
and
W.M.P.Nos.11287 & 16166 of 2019

(Through Video Conferencing)

Tvl. North East Construction Contractors,
Represented by its Partner,
24-10, V.M.Complex,
Old Bangalore Road, Hosur.

... Petitioner

Vs.

Assistant Commissioner (ST),
Hosur (South), Hosur.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the respondent's proceedings in TIN:33083362019/2011-12 dated 07.03.2019 and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondent : Mr.Richardson Wilson
Additional Government Pleader

O R D E R

This Writ Petition has been filed for issuance of a Writ of Certiorari, to call for the respondent's proceedings in TIN:33083362019/2011-12 dated 07.03.2019 and quash the same.

2. A short point that arises for consideration in this Writ Petition is whether the impugned order passed by the respondent on 07.03.2019 can be said to have been passed within the

limitation prescribed under Sections 27 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "TNVAT Act, 2006").

3. The facts of the case are that there was a deemed assessment in terms of proviso to Section 22(2) of the TNVAT Act, 2006 for the Assessment Year 2011-2012 on 31.10.2012.

4. The learned counsel for the petitioner submits that Section 27(1) was amended in the year 2012 with effect from 19.06.2012. It is therefore submitted that the limitation as it stood prior to the aforesaid amendment would apply to the facts of the present case and therefore, notice issued on 10.10.2018 for revising the assessment was beyond the period of limitation and thus without jurisdiction.

5. The learned counsel for the petitioner submits that the respondent issued the said notice after the expiry of the limitation on 10.10.2018. It is submitted that the limitation expired on 30.10.2017. Alternatively, the learned counsel for the petitioner submits that even if the limitation had not expired on the date of issue of notice, the impugned order dated 07.03.2019 was passed after the expiry of limitation and was therefore time barred in view of the specific language in Section 27(1) of the TNVAT Act, 2006.

6. He further submits that re-assessment has to be completed within a period of six years from the relevant assessment even if Section 27(1) as amended with effect from 19.06.2012 was applicable and therefore, submits that the impugned order is liable to be quashed.

7. The learned counsel for the petitioner has placed reliance on the decision of this Court in Tvl.Victus Dyeings Vs. The Assistant Commissioner (ST), Rural Assessment Circle, Tirupur, in W.P.No.20925 of 2019 and etc batch, dated 29.07.2019. The learned counsel for the petitioner also relied on the following cases:-

i. Jaswant Sugar Mills Ltd., Meerut Vs. Lakshmi Chand and others, 1963 Supp (1) 242 : AIR 1963 SC 677.
ii. The Sales Tax Officer and another Vs. Messrs Sudarsanam Iyengar and Sons, 1969 (2) SCC 396.
iii. Brij Gopal and others Vs. State of M.P. and another, 1977 SCC OnLine MP 37 : AIR 1978 MP 122 (FB).
iv. Radha Kishan Vs, Dy. Director of Consolidation and others, 1985 SCC OnLine All 163 : 1985 AWC 357 All.

v. Mohit Shantilal Shah Vs. Commissioner of Income Tax, 1999 SCC OnLine Guj 405 : (2000) 241 ITR 28 (Guj).

vi. Ashok Leyland Ltd. Vs. State of Tamil Nadu and others, (204) 3 SCC 1 : AIR 2004 SC 2836.

vii. M.V.S.Kadirvel Nadar Vs. State of Madras represented by the Commissioner of Agricultural Income Tax, Madras, 1961 SCC OnLine Mad 130 : (1961) 74 LW 812.

viii. K.Mohd. Osman Saheb & Co. Vs. State of Andhra Pradesh and others, 1970 SCC OnLine AP 217 : (1971) 27 STC 303.

ix. The State of Gujarat Vs. Jamnagar Motor Stores, 1973 SCC OnLine Guj 102 : (1974) 33 STC 353.

x. Rajmal Multanmal and Company and another Vs. Commercial Tax Officer, Cuddapah and others, 1974 SCC OnLine AP 215 : (1976) 37 STC 252.

xi. Khetmal Parekh and Company Vs. State of Andhra Pradesh, 1976 SCC OnLine AP 260 : (1976) 38 STC 531.

xii. M.Ramakrishnaiah and Co. Vs. State of Andhra Pradesh, 1976 SCC OnLine AP 261 : (1976) 38 STC 537.

xiii. M.Gulam Mohideen Vs. The Commissioner of Agricultural Income Tax Board of Revenue, Madras and another, 1978 SCC OnLine Mad 3 : AIR 1978 Mad 327.

xiv. The State of Tamil Nadu Vs. K.O.Mohamed Sulaiman and Co., 1979 SCC OnLine Mad 367 : (1980) 46 STC 151.

xv. K.Lakshmanaswami Chettiar and Sons Vs. State of Tamil Nadu, 1979 SCC OnLine Mad 376 : (1980) 46 STC 327.

xvi. Jeewanlal (1929) Ltd. Vs. The State of Tamil Nadu, 1981 SCC OnLine Mad 451 : (1982) 49 STC 58 (Mad).

xvii. State of A.P. Vs. M.Ramaishtaiah and Co., (1994) 93 STC 406.

xviii. State of Andhra Pradesh Vs. Toshiba Anand Batteries Ltd., 1994 SCC OnLine AP 588 : (1995) 96 STC 664.

xix. The Commissioner, Sales Tax, U.P. Lucknow Vs. M/s.Sukh Lal Ice and Cold Storage, 2007 SCC OnLine All 816 : (2008) 2 All LJ 652.

xx. M/s.Murugan & Co. Vs. The Union of India and another, order dated 12.11.2019 passed by this Court in W.P.Nos.15165 to 15168 of 2018.

8. Appearing on behalf of the respondent, the learned counsel for the respondent submits that the notice dated 10.10.2018 was issued to the petitioner under Section 22(4) of the TNVAT Act, 2006 and not under Section 27(1) of the TNVAT Act, 2006. It is therefore submitted that the limitation prescribed under Section 27(1) will not apply. He therefore submits that the Writ Petition is devoid of merits and therefore the petitioner should be asked to workout the remedy in accordance with law before the Appellate Commissioner.

9. The learned counsel for the respondent further referred the following dates:-

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| Date of deemed assessment for 2011-12 | : 31.10.2012 |
| Add 6 years period | : 30.10.2018 |
| Date of issue of the notice and the revised assessment order | :10.10.2018/07.03.2019 |

10. It is submitted that the initiation of revision proceedings has been done on 10.10.2018 which is before 30.10.2018. Hence there is no question of the assessment getting time barred.

11. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

12. The notice that was issued to the petitioner on 10.10.2018 merely states that a cross verification of the check post data of the department reveal that the petitioner had purchased the goods from the outside of the State. A dealer paying tax under Section 6(1) of the Tamil Nadu Value Added Tax Act, 2006 should not purchase goods from the other States and effect sales. Hence, Section 6(1) of the Act, does not apply and therefore, notice proposed to levy tax under Section 5 of the Tamil Nadu Value Added Tax Act, 2006 at 14.5%.

13. The taxable turnover reported by the petitioner was enhanced to Rs.2,95,56,425/-. Accordingly, the tax payable was determined as Rs.26,00,966/- and after deducting the tax and TDS already paid, the tax due has been re-determined as Rs.24,18,434/- [26,00,966 – 1,82,532]. Over and above, the respondents have also levied penalty of Rs.39,01,499/- ( 24,18,434 x 150%) under Section 22(5) of the TNVAT Act, 2006.

14. Pursuant to the impugned order dated 07.03.2019, a notice of assessment and demand in Form 'O' was also issued calling upon the petitioner to pay the aforesaid tax of Rs.24,18,434/-. Similarly, the notice of interest under Rule 16 (5) of the TNVAT Rules, 2007 in Form 'RR' was issued on 07.03.2019 and thereafter, the petitioner was called upon to pay the aforesaid penalty of Rs.39,01,499/-.

15. Overall consideration of the facts and circumstances of the case, it cannot be said that the notice issued on 10.10.2018 was time barred. The decision of this Court in Tvl.Victus Dyeings Vs. The Assistant Commissioner (ST), Rural Assessment Circle, Tirupur, in W.P.No.20925 of 2019 and etc batch, dated 29.07.2019 cannot be applied to the facts of the present case inasmuch as the revision notice was issued after the expiry of the limitation.

16. In the present case, the notice has been issued in time for revising the assessment and therefore, to that extent, the initiation of the proceedings cannot be questioned. However, the demand is based on the data in the web portal of the respondent.

17. A learned Single Judge of this Court in JKM Graphics Solutions Private Limited Vs. The Commercial Tax Officer, (2017) 99 VST 343 (Mad), has directed the Sales Tax Department, to devise the mechanism to deal with the problem arising out of such mismatch between the turnover declared in the return and the data obtained from the web portal. Against the said order, Review Application No.173 of 2018 was filed which came to be dismissed on 12.02.2021. Accepting the order of the learned Single Judge of this Court, Principal Secretary / Commissioner of Commercial Taxes issued Circular No.5 of 2021 bearing reference No.LW10/12521/2016, dated 24.02.2021. As per the said Circular, a method has been devised which reads as under:-

> "3.3.3. If the Original Assessing Authority is unable to resolve either the whole or part of the mis-match, then the Original Assessing Authority shall issue notice to the dealer concerned indicating the discrepancy with an opportunity to show cause to reconcile the same. After the receipt of reply and after due enquiry, the Original Assessing Authority finds that the seller has effected the transaction shall make a request to Other End Assessing Authority through email (zimbra mail) marking copy to concerned DC and JC and seek for the requisite details of verification. If on enquiry Original Assessing Authority is of the view

buyer has made bogus claim/wrong claim, by being involved in bill trading by producing bogus invoice, etc., the buyer shall be assessed to tax/reversal of ITC, as the case may be, then the Original Assessing Authority shall pass appropriate orders in accordance with provisions of the TNVAT, Act, 2006.

3.3.5. The Assessing Authority should issue show cause notice along with all the details connected to the assessment seeking objections. On receipt of objections, the Assessing Authority shall fix a date and time of personal hearing (either physical or virtual hearing). The Assessing Officer shall grant adequate opportunity to the dealer to put forth their objections by duly following the principles of natural justice. During the course of enquiry, either on a request made by the assessee or suomotu, the Assessing Authority can summon the other end dealer and on request, a cross examination may be provided to the assessee if such dealer is available. However, if the dealer is non-existent the Assessing Officer may proceed to make an assessment on the basis of material on record in accordance with law. The entire process involving issue of show cause notice till final order may be completed within a period of 180 days”.

18. Though the above clarification is for mismatch in ITC claim, the method devised therein can be used to co-relate the purchase and sales turnover of a dealer apply this to clarify to the petitioner's case mutatis mutandis. I therefore set aside the impugned order and remit the case back to the respondent to pass fresh order, within a period of three months from the date of receipt of a copy of this order after re-examining the issue in the light of the above guidelines. Needless to state that before passing such order, the petitioner shall be heard.

19. This Writ Petition stands disposed in terms of the above directions. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

/True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (ST),
Hosur (South), Hosur.

+1cc to the Special Government Pleader, S.R.No.24970

W.P.No.10835 of 2019
and
W.M.P.Nos.11287 & 16166 of 2019

PM[co]
NSK 26/04/2022