IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2022

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THE HON'BLE Mr.JUSTICE **M.SUNDAR**

W.P.No.32759 of 2022
and
WMP.No.32151 of 2022
in
W.P.No.32759 of 2022

Jayam Food Processing Industries,
Rep. by its Partner R.Krishnasamy,
352, Suramangalam Main Road,
Manipuram, Salem-636 009.

... Petitioner

-Vs.-

The Commercial Tax Officer,
Sales Tax Office,
Theerthagiri Nagar, Karagarthahalli,
Palacode, Tamil Nadu-636 808. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the entire records of the respondent passed in TNGST No.3281223/96-97 dated 23.09.2010 and quash the order passed therein.

For Petitioner : Dr.Krishna Anand

For Respondent : Mr.T.N.C.Kaushik
Additional Government Pleader

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ORDER

This order will now govern the captioned writ petition and captioned 'Writ Miscellaneous Petition' ['WMP'] thereat.

2. Dr.Krishna Anand, learned counsel for writ petitioner and Mr.T.N.C.Kaushik, learned Additional Government Pleader on behalf of sole respondent are before this Court. Owing to the limited perimeter within which the captioned writ petition perambulates, main writ petition was taken up with the consent of learned counsel on both sides.

3. Short facts will suffice owing to the limited perimeter within which the captioned matter perambulates. Short facts shorn of granular particulars are that writ petitioner was a registered dealer under erstwhile 'Tamil Nadu General Sales Tax Act, 1959' [hereinafter 'TNGST Act' for the sake of brevity, convenience and clarity]; that the respondent appears to have issued a Pre-Assessment Notice dated 22.12.2004 qua 'Assessment Year 1996-97' [hereinafter 'said AY' for the sake of convenience and clarity]; that the writ petitioner did not reply to the same as it was beyond five years from the expiry of the said AY; that six years later (to be precise on 23.09.2010) the respondent confirmed the proposals and passed a revised Assessment order; that this was

followed by a demand notice dated 01.09.2020. Assailing '23.09.2010 revised assessment order' [hereinafter 'impugned order' for the sake of convenience and clarity] primarily on the ground of limitation captioned writ petition has been filed in this Court on 02.12.2022.

4. Learned counsel for writ petitioner, adverting to the writ affidavit more particularly paragraph 11 and preamble paragraph thereat submitted that the writ petitioner had discontinued business from 1998, the partner of writ petitioner's dealer firm, who is the deponent of the writ petitioner's firm is 85 years old and that the impugned order has been made well and truly beyond the five years time frame qua said AY. Elaborating on this, learned counsel for writ petitioner submitted that said AY is 1996-97 and five years elapsed on 31.03.2002.

5. Learned counsel drew the attention of this Court to an order made by a Hon'ble Division Bench of this Court in ***Universal Abrasives Vs. The Commercial Tax Officer*** dated 30.08.2013 wherein under similar circumstances, a similar notice was set aside on the ground that it was barred by limitation qua erstwhile TNGST Act.

6. In response to the above submission, learned Revenue counsel pointed out that there is delay on the part of the writ petitioner in approaching this Court. Learned Revenue counsel pointed out that the impugned revised assessment order is dated 23.09.2010, the demand notice is dated 01.09.2020 and the same has been served on the writ petitioner on 31.01.2022 but the writ petitioner has chosen to file the captioned writ petition only on 02.12.2022. Under the normal circumstances, this may qualify as latches on the part of the writ petitioner. Be that as it may, this is a case where the revised assessment is barred by limitation, limitation is predicated on public policy. This Court in ***Tvl.Victus Dyeings Vs. The Assistant Commissioner (ST)*** held that limitation being based on public law principle, an assessee cannot be kept guessing in eternity. This Court has also taken note of the other submissions and obtaining facts which are peculiar to the case on hand i.e., business having been closed from the year 1998, the deponent of writ affidavit [partner of the dealer firm] being 85 years old and deems it appropriate to not to sustain the latches argument on the part of the Revenue counsel making it clear that this order will not serve as a precedent in all cases in the days to come. In other words, latches will still be available as a ground in other cases. Be that as it may, this Court

has taken into account the quantum of demand also as a factor.

7. This Court also deems it appropriate to respectfully follow the ratio of a Hon'ble Division Bench of this Court in ***Universal Abrasives Vs. The Commercial Tax Officer*** case which has been alluded to supra elsewhere in this order.

8. In the light of the narrative thus far, the impugned revised assessment order is set aside. This means that the impugned demand notice dated 01.09.2020 also perishes though there is no separate limb of prayer challenging the same.

9. Captioned writ petition allowed with a further directive as set out supra. There shall be no order as to costs. Consequently, captioned WMP is disposed of as closed. There shall be no order as to costs.

20.12.2022
(2/2)

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To

The Commercial Tax Officer,
Sales Tax Office,
Theerthagiri Nagar, Karagarthahalli,
Palacode, Tamil Nadu-636 808.

M.SUNDAR, J

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