IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.11.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.32177 of 2022 &
WMP.Nos.31602 and 31603 of 2022

Tvl.Acer India Pvt. Ltd.,
Represented by its Assistant Manager-Legal,
Mr.Parameshwaran Balasubramanian,
R.S.No.38/2, Sedarapet Village,
Villianur Commune,
Puduherry – 605 111. ... Petitioner

Vs

The Commercial Tax Officer GD-III,
Commercial Taxes Department,
Puducherry-605 005. .... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for records in Notice No.34480008250/2004-2005 dated 08.11.2022 issued by the Respondent and quash the same as being without jurisdiction and direct the Respondent to be prescribed from demanding a total amount of tax of Rs.4,36,79,673/- (Rupees Four Crores Thirty Six lakhs Seventy Nine Thousand Six Hundred and Seventy Three only) along with interest from the Petitioner after the expiry of the time limit prescribed under the Pondicherry General Sales Tax Act, 1967 or Pondicherry Value Added Tax Act, 2007 as made applicable by the Central Sales Tax Act, 1956.

For Petitioner : Mr.G.Shivadass, Senior Counsel
for Mr.S.Muthuvenkatraman

For Respondent : Mr.J.Kumaran
Additional Government Pleader (Pondicherry)

ORDER

Mr.J.Kumaran accepts notice for the respondent and agrees that the issue that arises in this writ petition which challenges a notice dated 08.11.2022 for the periods 2004-2005, 2005-2006 and 2008-2009 issued under the Pondicherry Value Added Tax Act, 2007 read with Central Sales Tax Act, 1956 is covered by an order passed by this Court in W.P.No.2139 of 2021 dated 12.09.2022.

2.I have had an occasion to consider the identical challenge raised in this writ petition in the context of notice issued for the previous period that is 2003-2004 and I have passed the following order:

> *"The petitioner challenges a notice dated 04.12.2020 that relates to the period 2003-2004 and has been issued in terms of the provisions of the Puducherry General Sales Tax Act, 1967 (in short 'Act'). Returns of income were filed in time and an order of assessment had come to be passed under the provisions of the Act r/w the Central Sales Tax Act (CST Act) on 10.08.2007.*
>
> *2.The order contains a specific confirmation by the then Assessing Officer to the effect that the accounts were called for, checked as against purchases, sale vouchers and bills and that the turnover reported tallied with the turnover as per the books. The petitioner had claimed concessional rate of tax and the computation of the turnover refers to Form 'C' having been filed in support of the claim of concessional rate of tax.*
>
> *3.It appears that long after the completion of the assessment, the respondents had come to suspect the veracity of the 'C' forms*

that had been submitted by the petitioner during the time of the original assessment. The impugned notice had thus been come to be issued in December, 2020 and a perusal of the same reveals that the officer has, even in the course of the notice, proceeded to recompute the turnover in respect of the period 2003-2004 and deny the exemption claimed, computing the differential tax along with interest @ 2% from April, 2004 till date of notice.

4.Thus, in effect, the original order of assessment dated 10.08.2007 had come to be revised under impugned notice dated 04.12.2020 without notice or a pre-assessment proposal having been issued to the petitioner, and long after the period of limitation set out under Section 18 of the Act. To be noted that Section 18 sets out a limitation of five years from the expiry of the year to which the assessment relates, for assessment of escaped turnover. Thus, for determination of the turnover that has allegedly escaped assessment for the period 2003-04, the period of five years would expire by 31.03.2009 whereas the impugned notice has been issued only on 04.12.2020.

5. The offending portion of the notice reads as follows:

> *"....*
>
> *The declaration forms pertaining to the assessment year 2003-04 submitted by the dealer at the time assessment claim exemption from payment tax under the Central Sales Tax Act, 1956 were scrutinized. Scrutiny of Forms revealed that the dealer had claimed exemption from payment of tax by submitting "C" forms not issued to M/s Acer India Pvt. Ltd., Puducherry, correcting the values mentioned in the "C" forms and also by completely replacing the annexures attached with the "C" forms containing the invoice details.*
>
> *It is found that the dealer had fraudulently and intentionally corrected the values mentioned in the "C" forms with a malafide intention to claim exemption from payment of tax and thereby committed an offence punishable under the provisions of Central Sales Tax Act, 1956. Hence, the "C" form declarations as detailed in the annexure to this notice are rejected and the*

exemption availed by the dealer on the turnover of Rs.48.83.72.873/- is brought to tax net and the tax due of Rs.1,95,34,914/- (Rupees One crore Ninety five lakhs thirty four thousand nine hundred and fourteen only) is proposed to be collected from the dealer forthwith along with interest as calculated below:

Value for which exemption claimed	*Tax due @ 4%*	*Interest @ 2% p.m. From April, 2004*	*Total Due*
Rs.48,83,72,873/-	*Rs.1,95,34,915/-*	*Rs.7,85,04,312/-*	*Rs.9,80,39,227/-*

Therefore, the dealer is hereby directed to pay the above tax and interest amount of Rs.9,80,39,227/- (Rupees Nine crores eighty lakhs thirty nine thousand two hundred and twenty seven only) immediately failing which action will be taken to collect the arrears as per the provisions of the Central Sales Tax Act, 1956."

6.In my considered view, the above conclusion, wherein the officer has proceeded to revise the original assessment, is entirely mis-conceived and contain several irregularities and illegalities. The officer has proceeded to:

(i) revise assessment order dated 10.08.2007 which is impermissible and barred by law;

(ii) made an assessment in a notice which is also impermissible; and

(iii) recomputed the turnover after eleven years from the end of the period in question, which is beyond the period of limitation under Section 18 of the Act.

7.For the aforesaid reasons, the re-computation of turnover under notice dated 04.12.2020 and the consequent denial of exemption under the provisions of the Central Sales Tax Act are set aside.

8.Mr.G.Kumaran would emphasize the position that the purpose of re-determination of the turnover and denial of exemption is only to proceed as aginst the petitioner under the *provisions of Section 49 of the Act which provides for offences and penalties as well as the relevant provisions of the Central Sales Tax Act providing for penalties.*

9.In this context, he draws my attention to Section 469 of the Code of Criminal Procedure, 1973 that sets out the period of limitation for various offences. Section 468(2) sets out the periods of limitation, based on the category of punishment to be imposed, as six months, one year or three years, in the case of offences punishable with (i) fine (ii) imprisonment for a term not exceeding one year or (iii) imprisonment a for term within one month but less than three years, respectively.

10. The critical word used therein is 'offence' that postulates that the escapement of turnover ought to have been 'determined', and validly so, as a pre-condition for the limitation under Section 468(2) to stand triggered. Such determination of escapement of turnover, ought to have been made within the time period set out under Section 18 of the Act which has not been done in this case. The impugned notice is thus, also mis-conceived as it proceeds to contemplate a criminal liability in respect of an offence that is incapable of determination, being barred by law.

11.For the aforesaid reasons, the impugned notice is quashed and this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed."

3.Mr.Kumaran would also confirm that there is no challenge to order dated 12.09.2022 as on date. This is recorded.

4.In light of the admitted position, the observations and conclusions in order dated 12.09.2022 would apply on all force to the present case as well. Hence, the impugned orders are quashed.

Dr.ANITA SUMANTH, J.

5.This writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

kbs **30.11.2022**

Index : Yes / No
Speaking/Non-speaking Order

To

The Commercial Tax Officer GD-III,
Commercial Taxes Department,
Puducherry-605 005.

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