BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.3797 of 2022
and
W.M.P.(MD)No.3308 of 2022

M/s.Sree Mangayarkarasi Mills (P) Limited,
Represented by its Director Mr.K.Murugesan ... Petitioner

Vs.

The Assistant Commissioner (ST),
Thirupparankundram Assessment Circle,
Madurai. ... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the respondent in his proceedings in CST No.742782/2006-07 dated 28.01.2022, quash the same as it is in violation of the principles of natural justice and without jurisdiction as it is barred by limitation under the provisions of the Central Sales Tax Act 1956 read with Tamil Nadu Value Added Tax Act, 2006 in terms of the judicial decision rendered by this Court in the case of M.U.A Arumuga Perumal and Sons reported in 16 VST 188 (2008).

For Petitioner : Mr.R.D.Ganesan

For Respondent : Mr.M.Ramesh
Government Advocate

ORDER

This Writ Petition has been filed challenging the impugned proceedings dated 28.01.2022 under the Central Sales Tax Act, 1956, for the assessment year 2006-07 on the premise that the same is barred by limitation.

2. The Assessment year being 2006-07, would be governed by two enactments namely TNGST Act, 1959 and TNVAT Act, 2006. The period 01.04.2006 to 31.12.2006 would be governed by the TNGST Act, 2006 while the period from 01.01.2007 to 31.03.2007 would be governed by TNVAT Act, 2006.

3. It is submitted by the learned counsel for the petitioner that the petitioner had originally reported a total and taxable turn over of Rs.3,21,86,817/- in Form I returns filed for the assessment year 2006-07. It is submitted that no assessments were made and thus in terms of Section 22(2) of the Tamil Nadu Value Added Tax Act, 2006, the petitioner is

deemed to have been assessed on 30.06.2012 in terms of the returns that have been filed. It is submitted that thereafter, a notice for revision of assessment came to be issued on 29.12.2021, i.e., nearly 15 years after the assessment year, proposing to levy tax for want of declaration forms.

4. It is submitted by the learned counsel for the petitioner that the impugned proceedings is clearly bad in law inasmuch as in terms of Section 27 of the TNVAT Act, limitation is within six years from the date of assessment. In the present case, the deemed assessments having been made on 30.06.2012, the revision notice dated 29.12.2021 is almost after nine years from the date of deemed assessment and thus it is barred by limitation. Proceedings that are barred by limitation is a nullity, in this regard, it may be useful to refer to the following judgments:

i) Commissioner of Income Tax, Chennai vs. Alagendran Finance Ltd., reported in (2007) 7 SCC 215:

> *"**20.**....The revisional jurisdiction having, thus, been invoked by the Commissioner of Income Tax beyond the period of limitation, it was wholly without jurisdiction*

rendering the entire proceeding a nullity.”

ii) ITW Signode India Ltd., vs. CCE reported in (2004) 3 SCC 48:

*"**69.** The question of limitation involves a question of jurisdiction. The finding of fact on the question of jurisdiction would be a jurisdictional fact......"*

iii) State of Punjab and others vs. Bhatinda District Co-operative Milk Producers Union Ltd.,:

"24. Question of limitation being a jurisdictional question, the writ petition was maintainable."

5. The TNVAT Act, 2006 was introduced with effect from 01.01.2007, prior to it, the TNGST Act, 1959 was in force. The impugned order for the assessment year 2006-07, thus, would be governed by TNGST, 1959 for the period from 01.04.2006 to 31.12.2006. The provisions of TNGST Act, 1959 with regard to original assessment did not provide for any limitation. It is trite law that wherever limitation has not been prescribed for taking any action or passing any orders, it has been

consistently held that action ought to be taken or orders ought to be passed within a reasonable time. In this regard, it may be relevant to refer to the following judgments

(i)***State of Punjab v. Bhatinda District Coop. Milk Producers Union Ltd.***, reported in ***(2007) 11 SCC 363*****:**

> *"**17.** A bare reading of Section 21 of the Act would reveal that although no period of limitation has been prescribed therefore, the same would not mean that the suo motu power can be exercised at any time.*
>
> ***18.** It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors."*

(ii)***S.B. Gurbaksh Singh v. Union of India,*** reported in ***(1976) 2 SCC 181:***

> *"**15**....It may well be that for an exercise of the suo moto power of revision also, the revisional authority has to initiate the proceeding within a reasonable time. Any unreasonable delay in exercise may affect its validity. What is a reasonable time, however, will depend upon the facts of each case."*

(iii) ***J.M.Baxi and Co. Vs. UOI*** reported in ***2016 (336) E.L.T. 285 (Mad)***:

*"**16.** ...... Though the statute does not prescribe a period of limitation for passing an order of adjudication, the law is well settled that anything in respect of which no period of limitation is prescribed, should be done at least within a reasonable time. What is reasonable time, would depend upon the facts and circumstances of each case. In cases of this nature, where the weight of the cargo discharged by the vessel of a Steamer Agent is questioned, it is not possible for a Steamer Agent to defend themselves against the show cause notice long after the vessel had sailed. Therefore, the third question of law is also be answered in favour of the appellant."*

(iv) ***J.Sheik Parith Vs. Commissioner of Customs and another*** reported in ***2020 (374) E.L.T. 15 (Mad.):***

*"**23.** In Premier Ltd. v. UOI (W.P. No. 12780 of 2016 dated 13.02.2017), a Division Bench of the Bombay High Court considered a challenge to the show cause - cum-demand notice dated 22.07.1991, in response to which personal hearings were fixed only in 1997. The Court held that such delay would vitiate the validity of the notice itself holding at paragraph 9 that the power to issue a show cause notice carries with it the responsibility to adjducate upon it promptly.*

*...**28.** In Sanghvi Reconditioners Pvt. Ltd. v. Union of India (2018 (12) GSTL 290), a Division Bench of the Bombay High Court considered the delay of fifteen (15) years from issuance of a show cause notice and thirteen (13) years after a hearing for fresh proceedings had been initiated by the revenue. This was also a case where the proceedings had been consigned to the call book. The petitioner in that matter succeeded on the ground that the inordinate delay had not been justified by the revenue.*

***29.** In Transworld Shipping Services Pvt. Ltd. v. Government of India (381 ELT 178) a learned single Judge of this Court, and in Surendralal Girdharilal Mehta v. Union of India (W.P. No. 322 of 2015 dated 17.05.2018) the Calcutta High Court once again reiterated the settled position that an authority exercising power under the Statute can engage in an action that has the effect of disturbing the rights of a citizen only within the time stipulated and where such limitation was not stipulated, within a reasonable time."*

*(v)**Kanthimathy Estate vs. The Assistant Commissioner Commercial Taxes*** in ***W.P.(MD)Nos.3056 of 2016 etc., batch***:

"7. It is thus clear that a dealer is required to statutorily maintain and preserve books of accounts and all documents connected and ancillary to its business only for a period of five years from the date on which the assessment relating

to that year had become final. In the present case, the periods of assessment stretch from 1989-1990 to 1994-1995. The pre-assessment notices have been sent only on 23.08.1999 and proceedings completed in 2015. Thus even on this score, the time taken for conclusion of proceedings appears inordinately delayed and it thus unacceptable . The impugned orders are quashed."

6. This Court is of the view that the impugned proceedings being barred by statutory period of limitation stipulated under Section 27 of the TNVAT Act, 2006, for the period from 01.01.2007 to 31.03.2007, the same is thus bad for want of jurisdiction and a nullity. For the period from 01.04.2006 to 31.12.2006, the same being governed by TNGST Act, 1959, the initiation of assessement proceedings after 15 years from the assessment year stands vitiated on the score of suffering from unreasonable delay. In such circumstances, interference under Article 226 of the Constitution of India is warranted inasmuch as question of limitation relates to jurisdiction. An order barred by limitation is a nullity.

7. For the above reasons, this Court is of the opinion that the impugned proceedings is barred by limitation and thus bad for want of jurisdiction and a nullity. In view of the same, the impugned order is set aside. This Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

29.11.2022

Index : Yes / No
Speaking Order : Yes / No
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MOHAMMED SHAFFIQ, J.

Lm

To:
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Thirupparankundram Assessment Circle,
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