BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.04.2022

CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

Writ Petition (MD)Nos.4380 and 4381 of 2022

and

W.M.P.(MD)Nos.3694 and 3696 of 2022

Tvl. R.Sankara Narayanan Industries,
Rep. by its Proprietor,
R.Sankara Narayanan,
No.114, Opp. to RMTC Colony,
Mariammankovilpatti, Theni .. Petitioner in both the W.Ps.

Versus

The Deputy State Officer – 2,
Theni-1. .. Respondent in both the W.Ps.

Prayer in both the W.Ps.:- Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records on the file of the respondent in CST No.150430/2009-2010 and 2010-2011, dated 08.02.2022, and quash the same as illegal, without authority of Law and without jurisdiction as it is barred by limitation as prescribed under Section 9(2) of the Central Sales Tax Act, 1956 read with Section 27 (1)(a) of the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner (in all the W.Ps.) : Mr.A.Chandrasekaran

For Respondent (in all the W.Ps.) : Mr.M.Prakash
Additional Government Pleader

COMMON ORDER

The petitioner has challenged the impugned assessment orders both dated 08.02.2022 for the assessment years 2009-2010 and 2010-2011 as detailed below:-

W.P.(MD)No.	Petitioner	Asst. Year	Deemed Completion of Assessment Year	Expiry of Limitation	Date of 1st Notice	Date of impugned order
4380/2022	Sankara Narayanan Industries	2009-10	30.06.2012	30.06.2018	14.07.2021	08.02.2022
4381/2022	Sankara Narayanan Industries	2010-11	30.06.2012	30.06.2018	14.07.2021	08.02.2022

2.The case of the petitioner is that they had filed periodical returns under the provisions of Central Sales Tax Act, 1956 and the provisions of the Tamil Nadu Value Added Tax Act, 2006 as applicable to the provisions of the former Act. It is submitted that the assessment was deemed to have been completed on 30.06.2012. It is therefore submitted that the impugned proceedings, which preceded two notices, dated 14.07.2021, long after the expiry of limitation *i.e.,* on 30.06.2018 were without jurisdiction and therefore, they are liable to be quashed.

3.The learned counsel for the petitioner relied on the following three decisions of this Court:-

(i) **M/s.Sisco Medicals Device Private Limited, Rep. by its Managing Director, Vivek Bajaj vs. The Assistant Commissioner (CT), Nandambakkam Assessment Circle, Chennai** [W.A.Nos.1843 & 1844 of 2021, dated 04.08.2021]

(ii) **Tvl.Pupa Lineraa, Rep. by its Partner, S.Pushpa Rajan vs. The State Tax Officer, Karur-3 Division [W.P.(MD)No.14494 of 2021,** dated 27.10.2021]

(iii) **M/s.Adayar Bakery Private Limited, Rep. by its Director, Chennai vs. The Assistant Commissioner (ST), Adayar Assessment Circle, Chennai** [W.P.Nos.3028, 3030 and 3031 of 2019, dated 09.11.2021]

4.Opposing the prayer, the learned Additional Government Pleader for the respondent has relied on the decision of this Court, dated 30.03.2022, in **M/s.Parveeen Traders vs. The Assistant Commissioner (ST), Madurai,** [W.P.(MD)No.5713 of 2022], and sought for similar order may be passed by remitting the cases back to the respondent by giving opportunity to the petitioner to produce additional documents to substantiate that the petitioner had indeed filed all the returns in time together with required documents for completing the assessment.

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

6.Today, in a batch of Writ Petitions in W.P.(MD)No.5192 of 2022 etc. batch, under somewhat similar circumstances, this Court has passed an order remitting the cases back to the respondent to pass a speaking order within a period of 60 days from the date of receipt a copy of that order. The operative portion of the said order reads as under:-

> ''7.*The question of limitation against the respondent department from re-opening of the assessment would arise only where an assessee had filed all the related documents at the time of filing of returns. If the returns were filed along with the required documents, then, by virtue of fiction incorporated in Section 22(2) of the Tamil Nadu Valued Added Tax Act, 2006, the assessment is deemed to have been completed on the date specified in the said Section. In these cases, it is the specific case of the respondent that the petitioner had not filed the documents, whereas, it is the specific case of the petitioner that they have filed documents. If the documents have been filed, they would be available with the respondent. In any event, the petitioner will have a photocopy of the same.*
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> *8.Considering the above, I am inclined to remit the cases back to the respondent to pass a speaking order within a period of 60 days from the date of receipt of a copy of this order. The petitioner is directed to produce original or photocopy of the relevant forms, which were not filed along with the returns filed by them for the respective assessment orders.*
>
> *9.These Writ Petitions stand disposed of in terms of the above observation. No costs. Consequently, connected Miscellaneous Petitions are closed.''*

7.In **M/s.Adayar Bakery Private Limited, Rep. by its Director, Chennai vs. The Assistant Commissioner (ST), Chennai**, [W.P.Nos.3028, 3030 and 3031 of 2019, dated 09.11.2021], the specific case of the respondent therein was that the notice could not be issued in time because the Department was on appeal on the identical issue before the Division Bench in **Tvl.Zaitoon Multicuisine Family Restaurant vs. The Assistant Commissioner (ST), Thiruvanmiyur Circle, Chennai** [W.A.No.1444 of 2015] and after the writ appeal was disposed, the proceedings were initiated.

8.In my view, the above said decision cannot be applied to the four corners of the facts of the present cases. In the present cases, it is the specific case of the respondent that the petitioner had not filed all the required documents along with the returns. Therefore, the question of deemed assessment and the limitation cannot be put against the respondent. If the petitioner has requisite documents, they can produce the same. However, the learned counsel petitioner is unable to confirm the same even today whether they have required documents to bring a closure to the issue by re-examining the same. If the petitioner has those documents, I would have remitted the cases back to the respondent to pass a fresh order. The argument that Section 64(2) (b) of the Tamil Nadu Value Added Tax Act, 2006 also will come to the rescue of the petitioner cannot be countenanced, as the question of deemed assessment under Section 22(4) of the Tamil Nadu Value Added Tax Act, 2006 cannot be put against the Revenue, where no documents have been filed along with the returns.

9.At this juncture, it is relevant to extract below Section 22 (4) of the Tamil Nadu Value Added Tax Act, 2006:-

> *''22(4) –If no return is submitted by the dealer for any period of the year or if the return filed is incomplete or incorrect, or if not accompanied with any of the documents prescribed or proof of payment of tax, the assessing authority shall, after making such enquiry as it may consider necessary, assess the dealer to the best of its judgement, subject to such conditions as may be prescribed, after the completion of that year:*
>
> *Provided that before taking action under this sub-section, the dealer shall be given a reasonable opportunity of being heard.''*

10.Though the above said amendment to Section 22(4) of the Tamil Nadu Value Added Tax Act, 2006 came into force on 19.06.2012, the assessment in the present cases pertains to the assessment years 2009-2010 and 2010-2011. Therefore, I am of the view that it is of no specific importance as prior to the above said date, every return had to be scrutinized and assessment order had to be passed, but for the above said amendment, the petitioner would have been liable to pay tax based on the best of judgment assessment or under Section 25 of the Tamil Nadu Value Added Tax Act, 2006. I do not find any merit in the present Writ Petitions. Therefore, I am inclined to dismiss these Writ Petitions. However, liberty is given to the petitioner to file statutory appeal before the appellate Commissioner under the provisions of the Tamil Nadu Value Added Tax Act, 2006 as made applicable to assessments and appeals under the provisions of the Central Sales Tax Act, 1956.

11.These Writ Petitions stand dismissed with the above observation. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

The Deputy State Officer - 2,
Theni-1.

+2 CC to M/s.A. CHANDRASEKARAN, Advocate (SR-22446[F] dated 29/04/2022)

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28.04.2022

MGJ(24.05.2022) 5P 4C