BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 28.04.2022
CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

Writ Petition (MD)Nos.5192, 5193, 4407, 4408, 4375 and 4376 of 2022
and
W.M.P.(MD)Nos.4218, 4219, 3719, 3720, 3695 and 3697 of 2022

W.P.(MD)Nos.5192, 5193, 4407 and 4408 of 2022:-

Tvl. Arun Industries,
Rep. by its Partner,
P.Thiyagarajan
No.63/5, 63/9, 63/10, 64/1 & 6,
Rajapalayam Main Road,
Thirumangalam .. Petitioner in all the W.Ps.

Versus

The Assistant Commissioner (ST),
Jahindpuram Assessment Circle,
Madurai - 20. .. Respondent in all the W.Ps.

Prayer in all 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.742797/2008-09 and 2010-11, dated 23.02.2022 and CST No.742797/2006-07 and 2007-08, dated 10.01.2022, 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.

W.P.(MD)Nos.4375 and 4376 of 2022:-

Tvl. Arun Polimers,
Rep. by its Partner,
P.Thiyagarajan
No.63/5, 63/9, 63/10, 64/1 & 6,
Rajapalayam Main Road,
Thirumangalam .. Petitioner in both the W.Ps.

Versus

The Assistant Commissioner (ST),
Jahindpuram Assessment Circle,
Madurai - 20. .. 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.742270/2008-09 and 2009-10, dated 29.01.2022, 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 filed these Writ Petitions against the impugned assessment orders passed for the assessment years 2008-2009, 2010-2011, 2006-2007, 2007-2008, 2008-2009 and 2009-2010, 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
5192/2022	Arun Industries	2008-09	30.06.2012	30.06.2018	26.10.2021	23.02.2022
5193/2022	Arun Industries	2010-11	30.06.2012	30.06.2018	26.10.2021	23.02.2022
4407/2022	Arun Industries	2006-07	30.06.2012	30.06.2018	26.10.2021	10.01.2022
4408/2022	Arun Industries	2007-08	30.06.2012	30.06.2018	26.10.2021	10.01.2022
4375/2022	Arun Polymers	2008-09	30.06.2012	30.06.2018	20.10.2021	29.01.2022
4376/2022	Arun Polymers	2009-10	30.06.2012	30.06.2018	20.10.2021	29.01.2022

2.It is the specific case of the petitioner that the assessment were deemed to have been completed in terms of Section 22(2) of the Tamil Nadu Value Added Tax Act, 2006 read with Section 9(2) of the Central Sales Tax Act. It is therefore submitted that the proceedings initiated long after the period prescribed for re-opening the assessment under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 were without jurisdiction and therefore, they are liable to be quashed. Under these circumstances, the learned counsel for the petitioner prays for quashing of the impugned orders in these Writ Petitions.

3.Opposing the prayer, the learned Additional Government Pleader for the respondent submits that the question of limitation under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 would apply only if all the documents were filed along with return. In these cases, admittedly, for the assessment orders, the petitioner had not filed either 'C' Form or 'H' Form and therefore, the petitioner was liable to pay the tax and the question of assessment deemed to have been completed on 30.06.2012 by way of fiction incorporated in Section 22(2) of the TNVAT Act, would not apply.

4.The learned Additional Government Pleader has relied upon a decision of this Court in W.P.(MD)No.5713 of 2022, in the case of M/s.Parveen Traders vs. Assistant Commissioner (ST), Madurai, pronounced on 30.03.2022.

5.The learned counsel for the petitioner submits that the petitioner indeed had produced all the records. However, the respondent is unnecessarily harassing the petitioner by seeking to re-open the deemed assessment, which is deemed to have been finally accepted at the expiry of limitation.

6.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent. I have also perused the impugned orders and the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the provisions of the Central Sales Tax Act, 1956 and the Rules made thereunder.

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.

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.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

smn

To

The Assistant Commissioner (ST),
Jahindpuram Assessment Circle,
Madurai – 20.

+1 CC to M/s.A. CHANDRASEKARAN, Advocate (SR-22447[F] dated 29/04/2022)

+1 CC to M/s.SPL. GP (SR-22985[F] dated 29/04/2022)

WP (MD) Nos.5192, 5193, 4407, 4408, 4375 and 4376 of 2022

28.04.2022

MGJ(24.05.2022) 4P 4C