BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :09.11.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.8605 of 2021
and
W.M.P(MD).No.6479 of 2021

Tvl.Sammatti Fuel Centre,
Rep.by its Proprietor: E.Anvar Ali,
No.14/215, South Beach, Mandapam,
Ramanathapuram. ... Petitioner

Vs.

The State Tax Officer,
Ramanathapuram. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records on the file of the respondent in TIN No:33705443007/2010-11 dated 19.03.2021 and quash the same as without jurisdiction, against the Principals of Natural Justice and barred by limitation as prescribed under Section 27(1)(a) of the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner :Mr.A.Chandrasekaran
For Respondent :Mr.M.Siddharthan
Additional Government Pleader

O R D E R

This writ petition is filed challenging the impugned order dated 19.03.2021, for the assessment year 2010-11 on the grounds that the same is barred by limitation.

2.It is submitted that for the assessment year 2010-11, admittedly, the petitioner had submitted the monthly returns, in terms of Section 22(2) of the TNVAT Act, there was a deemed assessment on 30.06.2012. It is submitted that consequent to the deemed assessment, any re-assessment under Section 27(3) of the TNVAT Act ought to be made within a period of six years thereon ie., 30.06.2012 and the limitation of six years thus expires on 30.06.2018. However, according to the petitioner, it is submitted that the first of the notice for reassessment was issued on 14.12.2020, which is beyond the period of six years. It is the submission of the learned counsel for the respondent that prior to 14.12.2020, a notice was issued by the respondents on 27.02.2018. The learned counsel for the petitioner would submit that they are not in receipt of any such notice.

3.Mr.M.Siddharthan, learned Additional Government Pleader appearing on behalf of the respondent, took time to take instructions and submitted that the notice which is dated 27.02.2018, was sent by Ordinary Post and there is no acknowledgement or receipt.

4.Rule 19 of the TNVAT Act, sets out the procedures for service of notice and summons and the same reads as under:

"Service of notices, summons or orders:--

(1) The service on a dealer of any notice, summon or order under the Act or these rules may be effected either electronically or manually in any of the following ways, namely:--

(a) by giving or tendering it to such dealer or his manager or agent or the legal practitioner appointed to represent him or to his authorised representative; or Explanation:--Endorsement by person who delivers the notice, summon or order of having tendered or given will be proof for the purpose of this sub-rule.

(b) if such dealer or his manager or agent or the legal practitioner appointed to represent him, or his

authorised representative is not found, by giving or tendering it to any adult member of his family; or

(c) by sending it to the address of the dealer by registered post; or

(d) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence in the presence of two independent witnesses.

(2) Where any Hindu Undivided Family, firm or other association of persons is partitioned, dissolved or discontinued, notice, summon or order issued under the Act or these rules may be served on any member of the Hindu Undivided Family, any person who was a partner (not being a minor) or member of the association, as the case may be, immediately before such partition, dissolution or discontinuance."

A reading of the above Rule would show that the notices must be served by way of registered post and not by ordinary post if the notice is sought to be served by post. The prescribed mode of service has not been complied with. Further there is no reference to the notice dated 27.02.2018, in the notice dated 14.12.2020. It is only when the order came to be passed and on the aspect of limitation being raised by the petitioner, that reference was made to the notice dated 27.02.2018 which raises doubt over the fact of even service of notice much less service in terms of the prescribed mode. Any proceedings to be valid ought to be served in the manner prescribed. Failure to comply with the procedure/ prescribed mode of service would prove fatal to the validity of the proceedings.

5.In view of the fact that there is no material to indicate that the notice dated 27.02.2018 was served on the petitioner and in any view, admittedly even according to the instructions received by the learned counsel for the petitioner the notice dated 27.12.2018 having been sent by ordinary post which is not the mode of service prescribed in terms of Rule 19 of TNVAT Rules, the same would not constitute valid service of the notice.

6.This Court is of the view, that in the circumstances one cannot take into account, the notice dated 27.02.2018, for the purpose of reckoning limitation. If so, the first of such notice being issued on 14.12.2020, i.e, almost eight years, since 30.06.2012, when the deemed assessment was made, the impugned proceedings is barred by limitation and thus a nullity.

7.In the circumstances the writ petition is allowed by setting aside the impugned proceedings in TIN No.33705443007/2010-11 dated 19.03.2021. No costs. Consequently, connected miscellaneous petition is also closed.

09.11.2022

Index : Yes / No
Speaking Order : Yes / No
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To

The State Tax Officer,
Ramanathapuram.

MOHAMMED SHAFFIQ, J.

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