BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2022

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.594 of 2019
and
W.M.P.(MD).No.515 of 2019

V.Selva Rathinam ... Petitioner

Vs.

The Assistant Commissioner,
Commercial Taxes, Sivagangai,
Assessment Circle,
Sivagangai. ...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records of the Respondent herein TIN 33985 540 2501/2013-14 dated 10.07.2015 and quash the same.

For Petitioner : Mr.AR.L.Sundaresan,
Senior Counsel

For Respondent : Mr.M.Ramesh,
Government Advocate.

ORDER

The Writ Petition is filed challenging the impugned orders of assessment passed by the Respondent dated 10.07.2015 in respect of the assessment year 2013-14.

2. The short question that arises for consideration is whether the impugned order of assessment, whereby, the petitioner's claim of Input Tax Credit to the extent of Rs.18,60,729/- was rejected on the premise that the petitioner has not made the claim for Input Tax Credit within the timeline provided under Section 19(11) of the TNVAT Act, is valid.

3. Admittedly, the Input Tax Credit which is sought to be claimed relates to purchase made during the assessment year 2013-14. The petitioner has not filed any returns during the said assessment year and had filed their returns only on 28.05.2015. Section 19(11) of the TNVAT Act reads as under:

> *"(11) In case any registered dealer fails to claim input tax credit in respect of any transaction of taxable purchase in any month, he shall make the claim before the end of the financial year or before ninety days from the date of purchase, whichever is later."*

A reading of the above provision would show that any claim to Input Tax Credit ought to be made before the end of the financial year or before 90 days, whichever is later.

4. It is submitted by the learned counsel for the Respondent that the above question is no longer res integra and stands resolved by the judgment of the Hon'ble Supreme Court in the case of ***ALD Automotive (P) Ltd. v. CTO,***

reported in ***(2019) 13 SCC 225,*** wherein, it was held as under:

> *"The above case was thus on its own facts, this Court held that in exercise of residuary power of the Central Government, it had jurisdiction to pass such order in relation thereto as in its opinion the circumstances in the case require. In the scheme of the Tamil Nadu Value Added Tax Act, 2006, there is no power conferred on any authority under the Act to dilute the mandatory requirement under Section 19(11). The taxing statute has to be strictly construed. Nothing is to be read in, nothing is to be implied and language used in the taxing statute had to be looked into fairly. The benefits envisaged in the taxing statute had to be extended as per the restrictions and conditions envisaged therein. The statute having not given any indication for extension of time which is a condition for claiming input tax credit, the submission that that period could have been extended by the assessing authority is unfounded and cannot be accepted. Issue 5 is answered accordingly."*

Thus, the timeline specified under Section 19(11) of the TNVAT Act is mandatory and failure to comply would prove fatal to the claim of Input Tax Credit.

5. In the present case, admittedly, the returns have been filed only after the period prescribed under Section 19(11) of the Act had expired and thus the claim of Input Tax Credit is barred. However, insofar as penalty under Section 27(3)(c) is concerned, this Court is of the view that the levy may not be

warranted in the absence of even a finding of wilful non-disclosure which is a condition precedent for invoking Section 27(3)(c). Though the above judgments are rendered considering Section 16 of the TNGST Act, 1959, inasmuch as Section 27 of the TNVAT Act, 2006 is similar to Section 16 of the TNGST Act, 1959, the following judgments are relevant in this regard:

(I) R.E.M.Ramakutty Nadar vs. The State of Madras reported in ***(1973) 31 STC 44:***

> *"**8.** Thirdly, the learned counsel for the petitioner contends that the levy of penalty cannot, in any event, be justified for there is no specific finding that there has been a wilful non-disclosure of the assessable turnover by the petitioner in the order of assessment and that such a finding is absolutely essential if an order of penalty is to be justified under section 16. We are inclined to agree with the learned counsel for the petitioner in this regard. In T.P.S.R. Factory P. Ltd. v. Deputy Commercial Tax Officer and Hindustan Steel Ltd. v. State of Orissa, it has been clearly laid down that the power to levy the penalty being a discretionary one, the authority should give reasons before proceeding to levy penalty and that the finding on the non-disclosure of the assessable turnover by the dealer is a sine qua non for the authority levying penalty under section 16(2). We find in these cases that the assessing officer has not given any such finding. Now, that we have construed the order of assessment as one made under section 16, the order levying the penalty without a finding of*

wilful non-disclosure by the petitioner could not be upheld."

(ii)*The Deputy Commissioner (C.T.), Coimbatore vs. V.S.R.Ramaswami Chettiar and Bros* reported in ***(1976) 38 STC 382***:

> "*The scheme of Section 16 shows that a reassessment could be made for any reason where any whole or any part of the turnover of business of a dealer has escaped assessment to tax. But if the penalty is to be levied on the ground of escapement of the turnover, a finding is necessary as to the wilful nature of the non-disclosure."*

6. In view of the same, insofar as the penalty is concerned, the impugned order is set aside while insofar as reversal of Input Tax Credit, the impugned order of assessment is sustained. Accordingly, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

16.11.2022

Index : Yes / No
Internet : Yes/ No
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MOHAMMED SHAFFIQ, J.

Lm

To:

The Assistant Commissioner,
Commercial Taxes, Sivagangai,
Assessment Circle,
Sivagangai.

W.P.(MD).No.594 of 2019

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