BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2022

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.18564 of 2021
and
W.M.P.(MD)No.15323 of 2021

T.Kumaran Traders,
No.3, Thulukanthamman Koil Street,
G.M.Pet, Royapuram,
Chennai - 600 0013. ... Petitioner

Vs.

The State Tax Officer, (FAC)
Kovilpatti - I,
Taluk Office Building,
Ettaiyapuram Road,
Kovilpatti – 627 701. ... Respondent

PRAYER : 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 TIN.No.33135862506/2009-10 dated 24.08.2021 and quash the same.

For Petitioner : Mr.R.Kumar

For Respondent : Mr.M.Prakash
Additional Government Pleader

O R D E R

The impugned order passed by the Respondent dated 24.08.2021, is under challenge in this Writ Petition.

2. The limited ground on which the challenge made is that though initial notice was issued on 10.04.2015, the Respondent has issued the second notice almost after six years from the date of initial notice on 19.04.2021 and proceeded to pass the impugned order, dated 24.08.2021.

3. It is the case of the Petitioner that the impugned proceedings are bad in law in view of the fact that though the first notice is within a period of limitation, however, the second notice has been issued after a delay of almost six years. Thereafter, the learned counsel for the Petitioner submitted that any proceedings ought to be completed within a reasonable time.

4. To the contrary, the learned Additional Government Pleader appearing for the Respondent submitted that notice was issued within the period of limitation there is no time limit for completing the proceedings. The limitation in terms of Section 27 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as 'the Act') is only with reference to initiation of reassessment proceedings and not with reference to passing of the impugned order of assessment.

5.There could be no doubt that the limitation under Section 27 of the Act is only with reference to initiation of proceedings and not passing of the impugned order of assessment / completion of assessment. However, it may be relevant to note the following dates, for the assessment year 2009-10. There was no orders of assessment and thus must be deemed to have been assessed on 30.06.2021, in terms of proviso to Section 22(2) of the Act. Section 27 prescribes the limitation for reassessment as six years from the date of assessment. Thus applying the above limitation, the re-assessment for the assessment year 2009-10 ought to have been made within six years from the date of deemed assessment, i.e., 30.06.2012. In other words, the period of limitation for making the reassessment under Section 27 would be barred on 30.06.2018. The reassessment notice was issued on 10.04.2015, which is well within the period of limitation that is prescribed under Section 27 of the Act. However, there has been no action pursuant to the said notice until the second notice which came to be issued on 19.04.2021 almost six years from the date of the first notice. As stated above, the limitation for exercise of powers of reassessment itself is six years from the date of orders of assessment and the same would thus expire on 30.06.2018, whereas the second notice is issued six years from the date of the first notice and close to three years after the limitation for reassessment in terms of Section 27 had expired. In the circumstances, question arises as to whether the impugned proceedings of reassessment dated 24.08.2021 can be sustained.

6. 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."*

7. It may also be relevant to note that this Court has also held that

though the issuance of notice within the period of limitation is made, however if the orders are not made within a reasonable time, mere issuance of show cause notice would not by itself provide immunity to the assessment orders from being challenged as having been made beyond reasonable period and thereby suffering from the vice of arbitrariness. In this regard, it may be relevant to refer to the following judgments:

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

> *"**16.** In the order of adjudication dated 07.01.2000, there is nothing to indicate as to what transpired from 23.5.1995 up to 07.01.2000, except for two dates. One is a letter dated 23.10.1999 where the appellant sought an injury to be inflicted upon them voluntarily, reminding the Department of the pendency of the show cause notice. The next date is 04.01.2000 when a personal hearing took place. Therefore, the order of adjudication certainly had not taken place within a reasonable period. 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."

(ii) ***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."*

(iii) ***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."

8. It is thus clear that even if the notice was issued within the prescribed period of limitation, inordinate/unreasonable delay in completing the proceedings would vitiate the same. In the present case, there is no explanation as to why it has taken more than six years after the issuance of the first notice on 10.04.2015 to issue the second notice on 19.04.2021 while proceeding to pass the impugned orders on 28.04.2021. In view of the same, following the above orders of this Court and in particular, the case of ***Kanthimathy Estate vs. The Assistant Commissioner Commercial Taxes*** in ***W.P.(MD)Nos.3056 of 2016 etc., batch,*** wherein, the provisions of Section 16 which is pari materia to Section 27 was considered, and it was held that failure to complete the reassessment proceedings within a reasonable time after initiation of the proceedings, would vitiate the reassessment. This Court is of the view that the impugned order of assessment cannot be sustained and liable to be set aside.

9. Accordingly, this Writ Petition is disposed of. No costs.

Consequently, connected Miscellaneous Petition is closed.

27.09.2022

Index : Yes / No
Speaking Order : Yes / No

vji/lr

To

The State Tax Officer, (FAC)
Kovilpatti - I,
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Kovilpatti – 627 701.

MOHAMMED SHAFFIQ, J.

vji/lr

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