BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.20071 of 2022
and
W.M.P.(MD)No.14593 of 2022

Tvl.Aruppukottai Shri Vijayalakshmi
Textiles Mills (P) Limited,
Represented by its Director G.Ravi. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Commercial Tax Building,
Aruppukottai. ... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for records in TIN No. 33985800783 D.No.151/C.No.222/2015/2007-08 dated 22.04.2022 issued by the respondent and quash the same as illegal and in violation of the principles of natural justice without jurisdiction and barred by limitation as prescribed under Section 27 of the Tamil Nadu Value Added Tax Act 2006.

For Petitioner : Mr.N.Sudalaimuthu

For Respondent : Mr.M.Siddharthan
Additional Government Pleader

O R D E R

This Writ Petition is filed challenging the impugned order dated 22.04.2022 for the assessment year 2007-08 on the premise that the same is barred by limitation.

2. It is submitted by the learned counsel for the petitioner that the petitioner was a manufacturer of yarn and had submitted its returns and vide order dated 24.10.2013, an assessment was made under Section 22(2) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "the Act") for the assessment year 2007-08. It is submitted that subsequently on the basis of verification of office records, the impugned order 22.04.2022 has been passed by the Respondent, which is barred by limitation as per Section 27 of the Act, which provides for revision of assessment within six years from the date of the original order.

3. The learned Additional Government Pleader appearing for the Respondent placed reliance on the impugned order and submitted that notices dated 06.08.2019 and 14.10.2019 were issued to the petitioner calling for objections and only in the absence of non-filing of objections with supportive documents, the impugned order has been passed.

4. The original assessment order dated 24.10.2013 although refers to Section 22(2) of the Act, it appears that the same cannot be traced to Section 22(2) of the Act in view of the fiction contained in the proviso to Section 22(2), which provides that all assessments from the assessment year 2006-07 till 2010-11 shall be deemed to have been assessed on 30.06.2012. In view of the above deeming the assessment under Section 22(2) of the Act is deemed to have been made on 30.06.2012. Any assessment made after 30.06.2012 could be traced to Section 27 of the Act, which prescribes six years from the date of orders of assessment, viz., 30.06.2012. Thus, any assessment ought to have been made under Section 27 of the Act on or

before 30.06.2018. Assuming that this assessment dated 24.10.2013 is traceable to Section 27 of the Act and the present impugned order is also traceable to Section 27 of the Act, the impugned order dated 22.04.2022 ought to be in compliance with the limitation prescribed under Section 27 of the Act, which provides that any assessment ought to be made within six years from the date of the assessment. In the present case, the original assessment is deemed to have been made in terms of Section 22(2) of the Act on 30.06.2012. In view of the same, any assessment traceable to Section 27 of the Act ought to have been initiated on or before 30.06.2018. Though this Court is conscious that issuance of notices would be sufficient for reckoning the period of limitation and it may not require passing of the impugned order within the six year period for the purpose of limitation. This Court finds that the notice was issued on 06.08.2019, i.e., beyond six years from 30.06.2012. The initiation of assessment itself is thus beyond the period of limitation, the consequential assessment is also barred by limitation.

5. This Court is of the view that the impugned proceedings being barred by limitation, the same is bad for want of jurisdiction and a nullity. In such circumstances, interference under Article 226 of the Constitution of India is warranted inasmuch as question of limitation relates to jurisdiction. An order barred by limitation is a nullity. In this regard, it may be useful to refer to refer to the following judgments:

i) *Commissioner of Income Tax, Chennai vs. Alagendran Finance Ltd., reported in (2007) 7 SCC 215:*

> ***"20.****....The revisional jurisdiction having, thus, been invoked by the Commissioner of Income Tax beyond the period of limitation, it was wholly without jurisdiction rendering the entire proceeding a nullity."*

ii) *ITW Signode India Ltd., vs. CCE reported in (2004) 3 SCC 48:*

> ***"69.*** *The question of limitation involves a question of jurisdiction. The finding of fact on the question of jurisdiction would be a jurisdictional fact......"*

iii) <u>State of Punjab and others vs. Bhatinda District Co-operative Milk Producers Union Ltd.,:</u>

> *"24. Question of limitation being a jurisdictional question, the writ petition was maintainable."*

6. For the above reasons, this Court is of the opinion that the impugned proceedings is barred by limitation and thus bad for want of jurisdiction and a nullity. In view of the same, the impugned order is set aside. This Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

29.11.2022

Index : Yes / No
Speaking Order : Yes / No

Lm

To

The Assistant Commissioner (ST),
Commercial Tax Building,
Aruppukottai.

MOHAMMED SHAFFIQ, J.

Lm

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