IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P. No.1175 of 2023 and
W.M.P. No.1202 of 2023

M/s.Noble Tech Industries Pvt. Ltd.,
rep. by its Director,
Mr.Ramesh ... Petitioner

vs.

Office of the Assistant Commissioner (ST),
Loansquare Assessment Circle,
Integrated Commercial Taxes Building,
No.32, Elephant Gate Bridge Road,
Vepery, Chennai-3. ... Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent in Tin 33980140833 dated 12.07.2021 respectively and quash the same as illegal, without jurisdiction, barred by limitation and against the principles of natural justice and fair play, contrary to the provisions of TNVAT Act and directing the respondent to allow the claim of the petitioner with respect to input tax credit for claim of burning loss in accordance with the act on merits.

For petitioner : Mr.T.C.Sajith Babu

For respondent : Ms.Amirtha Poongodi Dhinakaran,
Government Advocate

ORDER

By consent of both the parties, this writ petition has been taken up for final disposal at the admission stage itself.

2.Challenging the order bearing Tin No.33980140833 dated 12.07.202, passed by the respondent and seeking a direction to the respondent to allow the claim of the petitioner with respect to input tax credit for claim of burning loss, this writ petition has been filed.

3.The petitioner has challenged two separate impugned demand notices issued by the respondent both dated 12.07.2021 on the ground of limitation. According to the petitioner, as per provisions of Section 27 of the Tamil Nadu Value Added Tax Act, any re-assessment can be made by the respondent, within a period of six years from the date of the original assessment. According to the petitioner, the impugned notice of demand is a single notice dated 12.07.2021 and therefore the amount sought to be recovered from the petitioner pertaining to assessment years 2006-07 upto 2016-17 is bad in law as the said demand has been made after a

period of six years pursuant to the re-assessment order and hence, barred by limitation.

4.Heard Mr.T.C.Sajith Babu, learned counsel for the petitioner and Ms.Amirtha Poongodi Dhinakaran, learned Government Advocate, who accepts notice on behalf of the respondent.

5.Learned Government Advocate appearing for the respondent fairly submits that insofar as the assessment years 2006-07 upto 2010-11 for which recovery has been sought for from the petitioner are concerned, the same is time barred as per the provisions of Section 27 of the Tamil Nadu Value Added Tax Act as the demand has been made after a period of six years. However, she would submit that insofar as the assessment years 2011-12 upto 2015-16 are concerned, the said demand has been made within the prescribed time of six years and therefore, the question of interfering with the said notice dated 12.07.2021 by this Court will not arise. Section 27(1)(a) of the Tamil Nadu Value Added Tax Act 2006, which deals with assessment of escaped turnover and wrong availment of input tax credit, reads as follows:

'27.(1)(a)Where, for any reason, the whole or any part of the

turn over of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of sub-section (3), at any time within a period of [six years from the date of assessment] determine to the best of its judgment the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary.'

6.The proviso to Section 22 of the Tamil Nadu Value Added Tax Act, which deals with returns submitted for the years 2006-07 upto 2010-11, makes it clear that when the assessment orders are not passed by the respondent, it shall be deemed to have been assessed on 30.06.2012. Proviso to Section 22(2) of the Act reads as follows:

'[(2)The assessing authority shall accept the returns submitted for the year, by the dealer, if the returns are in the prescribed form and accompanied with the prescribed documents and proof of payment of tax. Every such dealer shall be deemed to have been assessed for the year on the 31st day of October of the succeeding year:

Provided that in respect of such returns submitted for the years 2006-2007, 2007-2008, 2008-2009, 2009-2010 and 2010-2011, on which assessment orders are not passed shall be deemed to have been assessed on the 30th day of June

2012.]'

7.As seen from the aforementioned provisions, any demand for any escaped assessment of tax shall be made within a period of six years from the date of assessment.

8.In the instant case, admittedly, demand has been made under the impugned notice for the assessment years 2006-07 upto 2010-11 only on 15.02.2019, which is reflected in the re-assessment order passed under Section 27 of the Act on 31.03.2021. Since notice of demand has been made only on 15.02.2019 for the assessment years 2006-07 upto 2010-11, after a period of six years, as fairly submitted by the learned Government Advocate appearing for the respondent, the demand for the assessment years 2006-07 upto 2010-11 has to be necessarily quashed. However, insofar as the impugned notice dated 12.07.2021 issued by the respondent for the assessment years 2011-12 to 2015-16 is not barred by limitation, as the demand was made by the respondent on 15.02.2019,

within the prescribed period of six years as prescribed under Section

27(1) of the Tamil Nadu Value Added Tax Act 2006.

9.Learned counsel for the petitioner would contend that the impugned notice is a single notice covering all the assessment years right from 2006-07 upto 2015-16, which in the considered view of this Court, is not correct. They are two separate notices though they may be dated the same i.e. 12.07.2021. In fact, the petitioner has enclosed the separate notices dated 12.07.2021 along with this writ petition, which is the subject matter of challenge in this writ petition. The separate notices make it clear that the first notice has been issued for the assessment years 2006-07 upto 2010-11 and the second notice has been issued for the assessment years 2011-12 upto 2015-16. Being two separate notices issued for different assessment years, one covering for the years 2006-07 upto 2010-11 and the other covering for the years 2011-12 upto 2015-16, the contention of the learned counsel for the petitioner that it is a single notice has to be rejected by this Court. The first notice dated 12.07.2021 for the assessment years 2006-07 upto 2010-11 is alone barred by limitation and the second notice dated 12.07.2021 issued by the respondent for the assessment years 2011-12 upto 2015-16 is not barred by limitation as the demand has been made, within a period of six years by the respondent as prescribed under Section 27(1) of the Tamil Nadu Value Added Tax Act 2006.

10.For the foregoing reasons, the impugned notice dated 12.07.2021 issued by the respondent for the assessment years 2006-07 upto 2010-11 is hereby quashed and insofar as the second notice is concerned, the contention of the petitioner is rejected by this Court.

11.Admittedly, the petitioner has not challenged the assessment order passed by the respondent in respect of the assessment years 2011-12 upto 2015-16. If aggrieved by the same, the petitioner will have to challenge the same in the manner known to them under law and liberty is granted to the petitioner for challenging the said assessment order pertaining to the assessment years 2011-12 upto 2015-16.

ABDUL QUDDHOSE, J.

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12.With the above observation, this writ petition is partly allowed. Consequently, connected W.M.P. stands closed. No costs.

19.01.2023

Index: Yes/No
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