IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.1703 and 1705 of 2021
and
W.M.P. Nos.1900 and 1905 of 2021

M/s.Chandra Metals,
Rep. by its Partner ... Petitioner in W.P.No.1703 of 2021

M/s.Chandra Stores,
Rep. by its Proprietor ... Petitioner in W.P.No.1705 of 2021

Vs.

The State Tax Officer,
Porur Assessment Circle,
Chennai. ... Respondent in both writ petitions

PRAYER in W.P.No.1703 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the respondent in his proceedings in TIN/33851387112/2011-12, quash the assessment order dated 28.12.2020 passed therein.

PRAYER in W.P.No.1705 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the respondent in his proceedings in TIN/33811380344/2011-12, quash the assessment order dated 28.12.2020 passed therein.

For Petitioner in both WPs. : Mr.C.Bakthasironmoni Advocate

For Respondents in both WPs. : Mr. Prashanth Kiran Government Advocate

COMMON ORDER

The common question that arises for consideration in both writ petitions is whether the assessment order for the assessment year 2011-12 dated 28.12.2020 is barred by limitation.

2. In both writ petitions, the petitioner had exercised the option to pay tax under Section 3(4) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "TNVAT Act") and also submitted the appropriate forms. Section 3(4) of the TNVAT Act provides an option to registered dealers whose turnover relating to taxable goods for a year is less than rupees fifty lakhs to pay tax for each year as his turn over relating to taxable goods at notified rate i.e. 0.5% during the relevant assessment year subject of course to fulfilling the conditions contained therein.

3. On the basis of alleged information/material gathered, the assessing authority was of the view that the petitioner's turnover has exceeded Rs.50 lakhs for the assessment year 2011-12 thus not entitled to composition

interms of Section 3(4) of TNVAT Act. The respondent proceeded to make an estimation by adding gross profit to the purchases turnover. A show cause notice was issued on 24.01.2020, to which the dealers replied on 21.10.2020 and on consideration of the same, the order dated 28.12.2020 came to be passed.

4. It is the case of the learned counsel for the petitioner that once returns are filed and no orders of assessment are made, then in terms of Section 22(2) of the Act, the assessee is deemed to have been assessed on 31st October of the following year. Thus, the assessment for the assessment year 2011-12 must be deemed to have been made on 31.10.2012. It is submitted that any reassessment thereafter ought to be made either under Section 27 or under Section 28 of the Act. The power of reassessment under section 27/28 of TNVAT Act ought to exercised within a period of 6 years from the date of order of assessment which in the present case is the deemed assessment on 31.10.2012 and thus the limitation of 6 years would expire on 31.10.2018. A notice proposing reassessment was issued only on 24.01.2020, thus the impugned order passed pursuant thereto is barred by

limitation.

5. To the contrary, it is submitted by the learned counsel for the Respondents that the petitioner's turnover had exceeded Rs.50 lakhs and therefore, the condition with regard to the turnover limit provided under Section 3(4) of the TNVAT Act is contravened, thus the petitioner is ineligible to discharge taxes in terms of the composition scheme under section 3 (4) of the TNVAT Act. The respondent was thus justified in making the reassessment.

6. Heard both sides, perused the materials available on record.

7. This Court finds that the impugned order is barred by limitation and lacking jurisdiction inasmuch the limitation of 6 years for reassessment stipulated under Section 27/28 of TNVAT Act from the date of order of assessment i.e., deemed assessment on 31.10.2012 in the instant case would expire on 31.10.2018. However, the revision/re-asssessment notice is issued only on 24.01.2020 beyond the period stipulated under section 27/28 of the TNVAT Act, the impugned order passed pursuant thereto is barred by

limitation and thus a nullity. In this regard, it may be useful to refer to the judgment of the Hon'ble Supreme Court in the case of CIT v. Alagendran Finance Ltd., (2007) 7 SCC 215 reported in 2007 SCC OnLine SC 944 at page 224, wherein it was held as under:

> *" 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."*
>
> *(emphasis supplied)*

8. In view of the above, the impugned orders are set aside. The writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

14.09.2023

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
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To:
The State Tax Officer,
Porur Assessment Circle,
Chennai.

MOHAMMED SHAFFIQ, J.

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