IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.3421 of 2021
and
W.M.P. No.3914 of 2021

T.Ranganathan ... Petitioner

v.

The State Tax Officer,
T.Nagar Assessment Circle,
No.46, Greenway Road,
Chennai 600 028. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the impugned order dated 26.12.2020 bearing reference No.TNGST/1561273/1999-2000 for the assessment year 1999-2000 as passed by the respondent and quash the same.

For petitioner : Mr.Thriyambak J. Kannan

For Respondent : Mr.T.N.C.Kaushik
Additional Government Pleader

ORDER

The short question that arises for consideration is as to whether the impugned order of assessment bearing reference No.TNGST/1561273/1999-2000 dated 26.12.2020 for the assessment year 1999-2000 stands vitiated for having been completed after almost 20 years from the year to which the assessment relates, on the ground of unreasonable delay and thus arbitrary, thereby falling foul of Article 14 of the Constitution of India.

2. Brief Facts:

During the assessment year 1999-2000, the petitioner was a partner in Sri Siddhi Projects, a partnership firm (hereinafter referred to as "firms"). The present writ petition is filed by the petitioner as a partner of the quondam partnership firm. During the relevant assessment year i.e., 1999-2000, the partnership firm was involved in civil construction, fabrication and structural works. It was registered under the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "TNGST Act") since 12.08.1999. In 2003, the partnership firm was converted into a limited company in the name of M/s.SSP Infrastructures and Projects Private Limited. The petitioner was one Director of the said company. Subsequently in the year 2007, the company SSP Infrastructures and Projects Private Limited was taken over by another entity and was renamed as Sree Sella Infrastructures and Projects Limited. It is stated that, the petitioner disassociated himself completely from the company and he was neither a Director nor held any official position in the said company since 2007. Assessment was completed, for the assessment year 1999-2000, on the basis of returns filed vide order dated 03.01.2001. Thereafter, a notice dated 17.03.2005 was issued alleging suppressions and proposing to revise the assessment and which was followed by a series of notice dated 22.06.2005, 04.10.2005, 09.01.2006, 18.01.2006, 23.01.2006, 17.04.2006 and 01.06.2006.

3. The erstwhile firm responded to the above notice vide letter dated 09.01.2006 wherein, it offered its explanation to the proposed revision of assessment. Thereafter, a notice dated 23.01.2006 was issued. The firm submitted a letter dated 08.02.2006 requesting time to submit its objection, which was acceded to and time was granted until 28.04.2006 vide notice dated 17.04.2006. Since assessment was proposed to be made on the basis of certain records, the firm vide letter dated 01.06.2006 requested the respondent authority to furnish copies of the records relied upon for revising assessment. Admittedly, there has been no response or any communication from either side thereafter until a notice dated 24.02.2020 came to be issued i.e., almost after 13 ½ years after the last

communication /notice dated 01.06.2006. A reply dated 29.02.2020 was filed by the petitioner wherein, it is stated by the petitioner that while being relieved from the company it was agreed to by its directors that they would attend to the issues of the firm including its liabilities. The relevant documents was stated to be handed over by the petitioner to the company officials on being relieved from duty. Thereafter, the impugned orders of assessment came to be passed on 26.12.2020.

4. The learned counsel for the petitioner submitted that after 01.06.2006, a notice came to be issued on 24.02.2020 i.e., after almost 13 years and 7 months. Under Section 16 of TNGST Act, reassessment ought to be initiated within 6 years from the date of the order of original assessment i.e., 03.01.2001. Having initiated within the prescribed period, the impugned order of assessment nevertheless suffers from being arbitrary and unreasonable inasmuch as it has been completed 14 years thereafter.

5. To the contrary, it was submitted by the learned counsel for the respondent that they had initiated re-assessment proceeding within the period

prescribed under Section 16 of the TNGST Act and there is no limitation prescribed under the Act for completion of the assessment and would therefore submits that the impugned proceedings cannot be rejected only on the ground of delay. It was further submitted that the reasons for the delay is in view of the following reasons:

i. Change of constitution of the partnership firm into Private Limited Company, without proper intimation to the department.

ii. Change of place of address of the firm without proper intimation to the department, thus there was difficulty in proceeding with the assessment in view of alleged difficulty in service of notice etc.,

iii. Time taken to verify the correctness of three profit and loss account filed for the same year 1999-2000 on different dates declaring three different contract receipt of Rs.68,82,360/-, Rs.2,72,81,046/- and Rs.7,15,49,867/- (for the year 1999-2000).

iv. Time taken to verify incriminating records/ files marked (D) (E) (H) (R) etc.,

6. Against the above background, question that arises is whether reassessment proceedings though initiated within the prescribed period completion of reassessment after 20 years from the year to which assessment relate would vitiate the proceeding.

7. I do not propose to examine the contents or the subject matter of reassessment as the limited question that this Court may have to resolve is as to whether impugned assessment order stands vitiated in view of the unreasonable and inordinate delay of over 14 years since the issuance of the notice dated 01.06.2006 before the next notice came to be issued on 24.02.2020 and completion of assessment vide order dated 26.12.2020 after almost 20 years from the relevant assessment year.

8. The limitation of six years from the date of assessment i.e., 03.01.2001 prescribed under Section 16 of the TNGST Act is meant for initiation of reassessment proceedings. Admittedly, in the present case, reassessment is initiated within the prescribed period by issuance of notice dated 17.03.2005 followed by a series of notice dated 22.06.2005, 04.10.2005, 09.01.2006,

23.01.2006, 17.04.2006 and 01.06.2006. The notice dated 01.06.2006 was the last of the 1st series of notice issued by the Respondent until another notice dated 24.02.2020 came to be issued i.e., almost 14 years since 01.06.2006 before proceeding to complete the reassessment on 26.12.2020. The reassessment was completed after almost 20 years which is three times longer than the period prescribed for reassessment under Section 16 of the TNGST Act. If the initiation of proceedings is beyond the period prescribed under Section 16 of the TNGST Act, it would then be barred by limitation prescribed under the statute and the proceeding would be bad for want of jurisdiction.

9. It may be relevant to note that though the limitation prescribed under Section 16 of the TNGST Act is only for the purpose of initiation and no limitation is prescribed for completing the reassessment, mere issuance of show cause notice by itself may not provide immunity to the assessment orders from being challenged as having been made beyond reasonable period and thereby suffering from the vice of arbitrariness.

10. I would think that if the reassessment proceedings was initiated within the prescribed period but is however not completed within a reasonable period, it would still stand vitiated for it would incur the wrath of Article 14 of the Constitution of India on the ground of arbitrary and unreasonable exercise of power.

11. 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) <u>State of Punjab v. Bhatinda District Coop. Milk Producers Union Ltd., reported in (2007) 11 SCC 363:</u>

> *"**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."*

12. The question that now arises for consideration in this writ petition is whether this Court in exercise of its jurisdiction under Article 226 of the Constitution of India can determine as to what would constitute reasonable period for passing orders under Section 16 of the TNGST Act or should it be left to the statutory authorities to decide the same. To answer the above question, it would be useful to refer to the judgment of the Hon'ble Supreme Court in the case of *State of Punjab v. Bhatinda District Coop. Milk Producers Union Ltd.,* reported in *(2007) 11 SCC 363,* wherein question arose as to what would constitute a "reasonable period" for exercising revisional jurisdiction in the absence of limitation provided under the Act and whether it could be left to the statutory authorities to decide the same. It was held the authorities under the Act being creatures of the statute would not be able to determine the same. Thus, it is for this Court in exercise of its plenary jurisdiction under Article 226 of the Constitution of India, to determine what would constitute reasonable period for

passing orders under Section 16 of the TNGST Act. In this regard, it may be relevant to refer to the judgment of the Hon'ble Supreme Court in *Bhatinda*, wherein it was held as under:

> *"19. .... Reasonable period, keeping in view the discussions made hereinbefore, must be found out from the statutory scheme...*
>
> *25. We are, however, not oblivious of the fact that ordinarily the writ court would not entertain the writ application questioning validity of a notice only, particularly, when the writ petitioner would have an effective remedy under the Act itself. This case, however, poses a different question. The revisional authority, being a creature of the statute, while exercising its revisional jurisdiction, would not be able to determine as to what would be the reasonable period for exercising the revisional jurisdiction in terms of Section 21(1) of the Act. The High Court, furthermore in its judgment, has referred to some binding precedents which have been operating in the field. The High Court, therefore, cannot be said to have committed any jurisdictional error in passing the impugned judgment."*
>
> *(emphasis supplied)*

12.1. A reading of the above judgment would show that it is for this Court to decide as to what would constitute "reasonable time" for taking actions or passing order in the absence of statutory prescription of limitation.

13. Now what would constitute "reasonable time" would depend on the scheme of the Act and the facts of the case. The explanation that is offered in the

counter with regard to the delay is unconvincing as could be seen from the following:

a) In the event of non-cooperation by the petitioner as alleged it was always open to the assessing authority to complete the assessment after granting the petitioner a reasonable opportunity. The alleged non-cooperation by the petitioner however cannot be a reason for the inaction of the Respondents for over 13 years to issue the next notice on 24.02.2020, since the last notice dated 01.06.2006.

b) The reason of change of constitution of the partnership firm into a Company and its address, the consequential difficulty in serving the notices is again unacceptable. Rule 52 of the TNGST provides that notices/orders may be served by giving or tendering to the dealer or his authorised representative or by sending through registered post. If the above modes are not practicable, service may be made by affixing the notice/order at the last known place of business or residence of the assessee. Thus the above reason cannot be accepted as a valid explanation for the inordinate delay in issuing the notice dated 24.02.2020 after the notice dated 01.06.2006.

c) The time taken to verify the correctness of three profit and loss account and incriminating records apart from change of assessing officers due to administrative reasons can hardly be an explanation for the delay of more than 13 years since 01.06.2006 when the last notice was issued and for completing the assessment for the year 1999-2000 vide order dated 26.12.2020 i.e., after almost 20 years.

14. Having found the explanation to be unconvincing rather unacceptable. We find that this Court has held inordinate delay in completing the proceeding after issuance of notice if found to be unreasonable would incur the wrath of Article 14 of the Constitution of India and vitiate the proceedings. 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 indic`ate 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."

(emphasis supplied)

(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."*

(emphasis supplied)

(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."

(emphasis supplied)

15. 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, the explanation as to why it has taken more than 13 ½ years after the issuance of the last of the 1st series of notice dated 01.06.2006 to issue the notice dated 24.02.2020 while proceeding to pass the impugned orders dated 26.12.2020 having already been found to be unconvincing and unacceptable, this Court has no hesitation in setting aside the impugned order 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 of the TNGST Act which is *pari materia* to Section 27 of the TNGST Act was considered, and it was held that failure to complete the reassessment proceedings within a reasonable time after initiation of proceedings within the prescribed period would nevertheless vitiate the reassessment. This Court is of the view that the impugned order of reassessment cannot be sustained and is liable to be set aside.

16. As a result, the writ petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

31.07.2023

Index: Yes/No
Speaking / Non speaking order
Neutral Citation: Yes/No
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To:
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MOHAMMED SHAFFIQ, J.

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