# IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 07.09.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.P. No.5066 of 2021**
**and**
**W.M.P. No.5642 of 2021**

M/s.Rishab Intermediates Private Ltd.,
Represented by its Managing Director,
Anilkumar,
B-87, 88, 96, 97,
PIPDIC Industrial Estate, Sedarapet,
Puducherry 605 111. ... Petitioner

Vs.

The Commercial Tax Officer, IAC/GD-III,
Commercial Taxes Department,
Puducherry. ... Respondent

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records on the file of the respondent herein in impugned notice vide No.34120007866/CTO-IAC/GD-III/71/2020-21 dated 18.12.2020 received on 19.01.2021 quashing the same.

For Petitioner : Mr.P.Suresh

For Respondents : Dr.Ramaswamy,
Additional Government Pleader
(Pondicherry)

**ORDER**

The writ petition is filed praying for a writ of Certiorari calling for the records on the file of the respondent herein in impugned notice vide No.34120007866/CTO-IAC/GD-III/71/2020-21 dated 18.12.2020 received on 19.01.2021 quash the same.

2. The petitioner is engaged in the business of manufacturing Basic Chromium Sulphate and registered under the Puducherry Value Added Tax Act (hereinafter referred to as "PVAT Act"). The petitioner had effected interstate purchases against C-Forms during the assessment year 2011-12 availing concessional rate of tax in terms of Section 8(1) read with Section 8(4) of the Central Sales Tax Act, 1956 (hereinafter referred to as "CST Act"). The petitioner submitted its returns and assessment has also been completed on 02.02.2016 determining the total and taxable turnover of Rs.6,67,40,294/- and Rs.6,64,26,304/-, while accepting the petitioner's claim on the interstate sales of Basic Chromium Sulphate against C-Forms at 2% on a turnover of Rs.6,49,72,753/-, while levying higher rate of tax in respect of interstate sales of Basic Chromium Sulphate not covered by

C-Forms.

3. While so, the impugned notice has been issued on the premise that 4 C-Forms were sent to the Tamil Nadu Tax Authorities to ascertain the authenticity and the report received from the Tamil Nadu State Tax Authorities would reveal that the above C-Forms were not issued by the concerned authority. The impugned notice proceeded to reject the petitioner's claim of concessional rate on the said inter-state sales while directing the petitioner to pay the differential tax and penalty, failing which it stated that action would be taken to collect the tax in terms of the CST Act. The relevant portions of the notice reads as under:

> *"The assessment for the year 2011-12 was completed on 02.02.2016 and M/s.Rishab Intermediates Pvt. Ltd., had availed a concessional rate of tax of 2% by submitting the above said forms. Since the above said forms were found to be not genuine, the same are rejected and the dealer is hereby directed to pay the above tax and penalty immediately, failing which action will be taken to collect the above tax due as provided under the CST Act, 1956."*

4. It is submitted by the learned counsel for the petitioner that limitation for assessment/reassessment under the CST Act in respect of dealers registered in Puducherry is governed by the CST Act read with

Central Sales Tax (Puducherry) Rules, 1967, (hereinafter referred to as "the Rules") and in particular Rule 5(6), 5(9) and 5(10) of the Rules which reads as under:

> *"(6) After the close of the year the assessing authority shall after such scrutiny of the accounts and after such enquiry as he considers necessary satisfy himself that the return or returns filed are correct and complete and finally assess under a single order the tax or taxes payable under the Act for the preceding year or for the year to which the return submitted relates, as the case may be: Provided that if no return or returns have been submitted by the dealer as required by sub-rules (1) and (2) or if any return or returns submitted by him appear to the assessing authority to be incorrect or incomplete the assessing authority shall after making such enquiry as he considers necessary and after giving the dealer an opportunity of proving the correctness and completeness of the return submitted by him determining the turnover to the best of his judgment and finally assess under a single order the tax or taxes payable under the Act for the preceding year. Such action may be taken in respect of a dealer who discontinues his business during the course of a year soon after such discontinuance.*
>
> .......
>
> *(9)Where, for any reason, the whole or any part of turnover of business of a dealer, has escaped assessment to tax, the assessing authority may, at any time within a period of five years from the expiry of the year to which the tax relates, 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 and after giving the dealer a reasonable opportunity to show cause against such assessment.*

*(10) Where, for any reason, the whole or any part of the turnover of business of a dealer has been assessed at a rate lower than the rate at which it is assessable, the assessing authority may, at any time within a period of five years from the expiry of the year to which the tax relates, reassess the tax due after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such re-assessment. "*

5. In the present case, as the assessment has already been completed on 02.02.2016, any assessment thereafter would be governed by the limitation prescribed under Rule 5(9) and 5(10) of the said Rules. A reading of the above Rules would show that if any turnover had escaped assessment or has been assessed at a rate lower than the rate at which it is assessable, the assessing authority may within a period of 5 years from the expiry of the year to which the tax relates, reassess the tax due after making such enquiry considered necessary and after granting the dealer a reasonable opportunity to show cause against such reassessment.

6. It is submitted by the learned counsel for the petitioner that the impugned notice which seeks to recover the differential rate of tax on the premise that the C-declaration forms mentioned therein are not genuine is

traceable to Rule 5(9) and 5(10) of the said Rules, and thus the power of reassessment under Rule 5(9) and 5(10) of the Rules ought to have been exercised within a period of 5 years from the year to which the assessment relates. In other words, it was submitted that any action under Rule 5(9) and 5(10) of the said Rules for the assessment year 2011-12 ought to have been initiated on or before 31.03.2017. The impugned notice issued on 18.12.2020 is thus barred by limitation and a nullity.

7. To the contrary, it is submitted by the learned counsel for the respondent that the impugned notice has been challenged on the misconception that it is traceable to Rule 5(9) and 5(10) of the said Rules overlooking the fact that it is traceable to Section 59 of the PVAT Act, which reads as under:

*59. (1) Any person who,—*

*(a) being an assessee under this Act, fails to submit a return as required by the provisions of this Act, or the rules made thereunder, or*

*(b) being a person obliged to register himself as a dealer under this Act, does not get himself registered, or*

*(c) being a person obliged to obtain a permit under this Act, does not obtain such permit, or*

*(d) collects any amount by way of tax under this Act, in contravention of the provisions of section 35, shall on conviction by a Judicial Magistrate, not below the rank of a Second-Class Judicial Magistrate, be liable to a fine of rupees one thousand.*

*(2) Any person who,—*

*(a) wilfully submits an untrue return, or, not being already an assessee under this Act, fails to submit a return as required by the provisions of this Act, or the rules made thereunder, or*

*(b) fraudulently evades the payment of any tax assessed on him or any fee or other amount due from him under this Act,*

*(c) dishonestly objects to a notice issued to him under sub-section (1) of section 39, or*

*(d) wilfully acts in contravention of any of the provisions of this Act, or*

*(e) after purchasing any goods in respect of which he has made a declaration as prescribed but fails without reasonable excuse to make use of goods for the declared purpose,*

*shall on conviction by a Judicial Magistrate of the First Class, be liable to a fine of rupees two thousand and in the event of a second or subsequent conviction, to simple imprisonment which may extend to six months or a fine of rupees three thousand or both.*

*(3) Any person who,—*

*(a) prevents or obstructs inspection, entry, search or seizure by an officer empowered under section 55, or*

*(b) prevents or obstructs inspection of any goods vehicle, or boat carrying goods, by an officer-incharge of a check-post or barrier or any officer empowered under section 58, shall on conviction, be liable to simple imprisonment which may extend to six months or a fine of rupees five thousand or both. "*

7.1. On a reading of Section 59 of the PVAT Act, this Court does not find it enabling recovery of differential tax. However, the impugned notice proposing to recover the differential rate of tax in view of the fact that the assessing officer is of the opinion/ belief that the C-Form mentioned in the impugned notice are not genuine is a case of reassessment traceable to Rule 5 (10) of CST Puducherry Rules, more so in the absence of reference to any provision in the notice more particularly section 59 of PVAT Act.

8. This Court finds that the submission of the learned counsel for the Respondent that the impugned notice is traceable to Section 59 of the PVAT Act, which only contemplates prosecution is misconceived. In the circumstance the impugned notice containing proposal to recover differential rate of tax in view of the fact that the assessing officer is of the opinion that the 'C' form are not genuine can be a consequence of reassessment which would be governed by Rule 5 (10) of CST Puducherry Rules which provides that any turnover that had escaped assessment or has been assessed at a rate lower than the rate at which it is assessable, the assessing authority may within a period of 5 years from the expiry

of the year to which the tax relates reassess the tax due. The impugned notice issued eight years after the expiry of relevant assessment year is barred by limitation and thus a nullity.

9. Having said that, this Court makes it clear that the Respondent authority are at liberty to take appropriate proceedings for submission of C-Declaration forms which in the view of the assessing officer are not genuine after affording the petitioner an opportunity in accordance with law.

10. In view of the above, the impugned notice is set-aside, the writ petition stands disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

**07.09.2023**

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
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**MOHAMMED SHAFFIQ, J.**

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To:
The Commercial Tax Officer, IAC/GD-III,
Commercial Taxes Department,
Puducherry.

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