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W.P. No.6783 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.6783 of 2021

and

W.M.P. Nos.7334 and 7341 of 2021

M/s.Gingee Agriculture Producers,
Co-operative Marketing Society Ltd. (E.1564),
Rep. By its General Manager – S. Ravi,
No.1, Subbu Street,
Sirukadambur,
Gingee 604 202,
Villupuram District.

... Petitioner

v.

The State Tax Officer,
Gingee,
Villupuram District.

... 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 in his impugned proceedings made in TIN:33664740070/2010-11/Internal Audit Defect No.48/8 dated 05.02.2021 and to quash the same.

For Petitioner : Ms.R.Hemalatha

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



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ORDER

The writ petition is filed challenging the impugned order of assessment for the year 2010-11 on the premise that reassessment have been completed after almost 10 years after the deemed order of assessment; thus stands vitiated on the ground of unreasonable delay.

2. It is submitted by the learned counsel for the petitioner that the petitioner society was registered under Cooperative Societies Act and involved in sales of certain essential commodities such as soap, Tea dust and Match boxes etc., to Public Distribution Shops (hereinafter referred to as "PDS") in and around Gingee. The sales made to PDS is stated to be exempt under the Tamil Nadu Value Added Tax. For the assessment year 2010-11, a deemed assessment was made under Section 22(2) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "TNVAT Act") vide order dated 29.04.2011. Thereafter, a notice dated 23.07.2014 was issued apparently invoking Section 84 of the TNVAT Act, a provision meant to rectify errors apparent on the face of record. In the said notice, the respondent called upon the petitioner to submit details of purchase and sales of Soap, Tea dust and



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Match boxes which are taxable goods and directed / requested to furnish the purchase and sales details.

3. After about 6 years, another notice came to be issued on 23.06.2020 and on this occasion, it was proposed to revise assessment invoking Section 27(1)(a) of the TNVAT Act to which the petitioner filed its objections vide letter dated 01.07.2020. Thereafter, yet another notice dated 30.12.2020 was issued to the petitioner, to which the petitioner responded vide letter dated 13.01.2021 wherein it was *inter alia* submitted that the notice itself was bad as being barred by limitation. Pursuant thereto, the impugned order of assessment was made vide order dated 05.02.2021. It is submitted by the learned counsel for the petitioner that if notice dated 23.07.2014 which is apparently issued invoking Section 84 of the TNVAT Act is kept aside then the first of the notices would only be on 23.06.2020 which is 9 years since the date of the deemed assessment proceeding dated 29.04.2011 and thus clearly barred by limitation of 6 years from the date of assessment prescribed in terms of Section 27 of the TNVAT Act for the purposes of reassessment. Assuming that the notice dated 23.07.2014 purportedly issued under Section 84 of the TNVAT



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Act was in fact traceable to Section 27 of the TNVAT Act and thus the initiation of reassessment is not hit by limitation under Section 27 of the TNVAT Act, nevertheless the respondent after having chosen to issue notice on 23.07.2014 went into slumber for almost 6 years before the second notice came to be issued on 23.06.2020, the above delay is unreasonable and therefore, the consequential order of assessment is unsustainable.

4. To the contrary, it was submitted by the learned counsel for the respondent that notice dated 27.03.2014 though makes a reference to Section 84 of the TNVAT Act is only a case of misquoting of the provision and a closer look at notice would clearly show it did not intend to rectify any error apparent, instead it intended to make reassessment thus the notice is traceable to Section 27 of the TNVAT Act. It was submitted once power is available with the assessing authority, mere misquoting of the provision may not have bearing on the validity of the proceedings. It was also submitted that once notice is initiated there is no limitation for completing the assessment and thus the submission of the assessment being barred by limitation is without merit and liable to be rejected.



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WEB COPY 5. Heard both sides. Perused the material on record.

6. The notice dated 23.06.2020 contains proposal to make reassessment while the notice dated 23.07.2014 was apparently issued under Section 84 of the TNVAT Act. If notice dated 23.06.2020 is treated to be the notice initiating reassessment invoking Section 27 of the TNVAT Act, then the same is clearly barred by limitation inasmuch as the proceeding under Section 27 of the TNVAT Act ought to be initiated within a period of 6 years from the date of the order of assessment 29.04.2011 i.e., 29.04.2017. Assuming that the notice dated 27.03.2014 is taken to be a notice for reassessment and thus within the period prescribed for reassessment under Section 27 of the TNVAT Act, nevertheless the issuance of notice after a slumber of over 6 years thereafter which contains firm proposals would still be bad as the delay is arbitrary and unreasonable which would vitiate the proceedings.

7. Now before proceeding further it may be relevant to note that it has been held on more than one occasion that the limitation of six years from the



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date of assessment prescribed under Section 27 of the TNVAT Act is only for the purpose of initiation of reassessment. Once the reassessment proceeding is initiated within the prescribed limitation, the fact that it is completed after the prescribed period would not by itself render the proceeding barred by limitation. In other words, there is no limitation statutorily prescribed for completing reassessment.

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

“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



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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."

9. 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 27 of the TNVAT Act or should it be left to the assessing 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 27 of the TNVAT Act. In this regard, it



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may be relevant to refer to the judgment of the Hon'ble Supreme Court in

WEB *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)

9.1. 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.

10. It may also be relevant to note that this Court has also held that though the issuance of notice within the period of limitation is made, however if the orders are not made within a reasonable time, mere issuance of show



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cause notice would not by itself provide immunity to the assessment orders being challenged as having been made beyond reasonable period and thereby suffering from the vice of arbitrariness. In this regard, it may be relevant to refer to the following judgments:

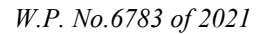
(i) *J.M.Baxi and Co. Vs. UOI* reported in 2016 (336) E.L.T. 285 (Mad):

“16. In the order of adjudication dated 07.01.2000, there is nothing to indicate 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 adjudicate upon it promptly.



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."*

(iii) Kanthimathy Estate vs. The Assistant Commissioner Commercial Taxes in
W.P.(MD)Nos.3056 of 2016 etc., batch:

(emphasis supplied)

11. It is thus clear that even if the notice was issued within the



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prescribed period of limitation, inordinate/unreasonable delay in completing the proceedings would vitiate the same. In the present case, there is no explanation as to why it has taken more than six years after the issuance of the first notice on 23.07.2014 to issue the second notice on 23.06.2020 while proceeding to pass the impugned order on 05.02.2021 after almost 10 years from the deemed assessment. This Court in the case of *J.M.Baxi* (cited supra) found that failure to explain the delay of 5 years after initiation would vitiate the proceeding on the ground of unreasonable delay. In view of the same and 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 which is *pari materia* to Section 27 of the TNVAT Act was considered, wherein 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.



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12. As a result, the writ petition is allowed. No costs. Consequently,

connected writ miscellaneous petitions are closed.

21.07.2023

Index: Yes/No

Speaking / Non-speaking order

Neutral Citation : Yes/ No

shk

To:

The State Tax Officer,
Gingee,
Villupuram District.

MOHAMMED SHAFFIQ, J.

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