IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.12687 of 2021 and
W.M.P. No.13477 of 2021

Precisision Techserve Private Ltd.,
Rep. by its Director,
T.G. Ramesh,
No.22, 1st Floor,
Habibullah Road,
T.Nagar, Chennai 600 017. ... Petitioner

Vs.

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

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the impugned order of the respondent passed in TIN/33941562002/2007-08 I.A.No.2/2015-16 dated 20.04.2021 and quash the same.

For Petitioner : Mr.N.Murali
For Respondent : Ms.Amrita Dinakaran,
Government Advocate

ORDER

The short question that arises for consideration is whether the impugned notice dated 13.12.2019 issued for the assessment year 2007-2008 under the TNVAT Act is barred by limitation.

2. It is submitted by the learned counsel for the petitioner that in view of the deeming contained in Section 22(2) of the Act, the assessment for the year 2007-2008 is deemed to have been made on 30.06.2012, therefore, six years from thereon which is the period fixed for invoking Section 27 of the Act would expire on 30.06.2018. However, there is no dispute that first of the notices under the TNVAT Act was issued only on 30.12.2018 which is well beyond the period prescribed under Section 27 of the Act and thus barred by limitation. It is submitted that any order or proceeding which is barred by limitation is a nullity inasmuch as limitation relates to jurisdiction.

3. To the contrary it was submitted by the learned counsel for the respondent that one cannot isolate TNVAT Act but must also take into account the assessment under Central Sales Tax Act (CST Act) while reckoning the limitation for making

reassessment under TNVAT Act inasmuch as the input tax credit entitlement will have to be made on the basis of declaration form filed under the CST Act. It was submitted that the assessment order under the CST Act was originally passed on 23.12.2015 against which an appeal was preferred in A.P.C.No.28/2016 dated 15.03.2018 and consequential order giving effect to the Appellate Authority's order was also made on 24.12.2018. It was thus submitted that assessment under the CST Act having been made on 23.12.2015, the limitation of 6 years must be reckoned from 23.12.2015 for the purpose of assessment under Section 27 of the TNVAT Act.

4. Heard both sides and perused the materials on record.

5. Although a faint attempt was made by the learned counsel for the respondent that the assessments are related to Section 22(4) of the Act. On a reading of the impugned order, it is evident that the Assessing Authority has himself understood that the impugned order as having been made in exercise of the power under Section 27 of the Act, in which case the limitation of six years from the date of assessment provided under Section 27 of the Act must be reckoned from the date of deemed assessment i.e., 30.06.2012 and thus any

proceeding under Section 27 of the Act must be initiated within six years thereof i.e.,30.06.2018.

6. The impugned proceedings under Section 27 is initiated only on 30.12.2018 thus barred by limitation. An order barred by limitation is a nullity and lacking jurisdiction. 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,* 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)*

7. In view of the same the impugned notice dated 13.12.2019 is set aside. Accordingly the writ petition is allowed. No costs. Connected Miscellaneous petition is closed.

08.11.2023

Speaking (or) Non Speaking Order
Index : Yes/ No
spp/shk

MOHAMMED SHAFFIQ, J.

spp/shk

To
State Tax Officer,
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No.46, Greenways Road,
Chennai 600 028.

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