IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

W.P.Nos.14643, 14646, 14653 & 14656 of 2022
and
W.M.P.Nos.13843, 13844, 13845, 13846, 13850, 13851, 13853 & 13854 of 2022

M/s.Seenu Paper Mart.,
Represented by its Proprietor,
Mr.P.Srinivasan. ... Petitioner in all W.Ps.

Vs

1. The Assistant Commercial Tax Officer,
GD-1,
Commercial Tax Department,
Puducherry.

2. The Commercial Tax Officer,
Enforcement and Intelligence Wing,
100 Feet Road,
Ellapillaichavadi,
Puducherry – 605 005. ... Respondents in all W.Ps.

Prayer in W.P.No.14643 of 2022: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the impugned proceedings of the first respondent in Assessment No & Year:34260001969/2012-2013 dated 10.05.2022 and quash the same and passed without jurisdiction based on invalid notice and also passed beyond the period of limitation as contemplated both under Section 24(5) of the Puducherry Value Added Tax Act, 2007 as well as under Section 30(1) of the Puducherry Value Added Tax Act, 2007.

Prayer in W.P.No.14646 of 2022: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the impugned proceedings of the first respondent in Assessment No & Year:34260001969/2013-2014 dated 10.05.2022 and quash the same and passed without jurisdiction based on invalid notice and also passed beyond the period of limitation as contemplated both under Section 24(5) of the Puducherry Value Added Tax Act, 2007 as well as under Section 30(1) of the Puducherry Value Added Tax Act, 2007.

Prayer in W.P.No.14653 of 2022: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the impugned proceedings of the first respondent in Assessment No & Year:34260001969/2014-2015 dated 10.05.2022 and quash the same and passed without jurisdiction based on invalid notice and also passed beyond the period of limitation as contemplated both under Section 24(5) of the Puducherry Value Added Tax Act, 2007 as well as under Section 30(1) of the Puducherry Value Added Tax Act, 2007.

Prayer in W.P.No.14656 of 2022: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the impugned proceedings of the first respondent in Assessment No & Year:34260001969/2015-2016 dated 10.05.2022 and quash the same and passed without jurisdiction based on invalid notice and also passed beyond the period of limitation as contemplated both under Section 24(5) of the Puducherry Value Added Tax Act, 2007 as well as under Section 30(1) of the Puducherry Value Added Tax Act, 2007.

For Petitioner	: Mr.P.Rajkumr (in all W.Ps.)
For Respondents	: Mr.V.Vasantha Kumar Additional Government Pleader (Pondicherry) (in all W.Ps.)

COMMON ORDER

By this common order all the four writ petitions are being disposed of.

2. In these writ petitions, the petitioner has challenged the Impugned Assessment Order dated 10.05.2022 for the Assessment Year 2012-2013 to 2015-2016.

3. This is the second round of litigation before this Court. Earlier the petitioner had challenged the composite notice dated 09.08.2018 before this Court in W.P.No.10998 of 2019 issued by the first respondent therein who is the second respondent herein.

4. The said writ petition was disposed of by an order of this Court dated 25.11.2021 after recording the submissions of the learned counsel for the respondents that the jurisdictional Assessing Officer namely the first respondent herein will pass final order and dispose of the Show Cause Notice dated 09.08.2018 for the respective assessment years within a period of 90 days from the date of receipt of a copy of this order.

5. Pursuant to the aforesaid order, a notice dated 11.03.2022 was issued by the second respondent along with working sheet and Annexure I to XXII. Thereafter, separate notices were issued by the first respondent on 19.04.2022 for each of the Assessment Year, wherein the allegations contained in the notice dated 09.08.2018 were reiterated.

6. The challenge to the Impugned Assessment Orders for the Assessment Years 2012-2013 to 2015-2016 is on the ground of limitation under Section 30 of the Puducherry Value Added Tax Act, 2007.

7. The learned counsel for the petitioner would submit that ordinarily the assessment could have been reopened within three (3) years from the end of the Assessment Years and in case of escaped assessment within a period of five (5) years.

8. It is submitted that the notice dated 19.04.2022 issued by the first respondent was clearly beyond the period of limitation under Section 30 of the Puducherry Value Added Tax Act, 2007. It is further submitted that the first respondent ought to have issued a notice

particularizing the demand and justified reasons for invoking Section 30 of the Puducherry Value Added Tax Act, 2007. It is further submitted that separate notices ought to have been issued for each of the assessment years within time.

9. The learned counsel for the petitioner has also placed reliance on the decision of this Court in **Tvl.Victus Dyeings** vs. **The Assistant Commissioner (ST)** rendered in W.P.No.20925 of 2019 and etc., batch dated 29.07.2019. It is submitted that the Impugned Orders are without jurisdiction and therefore are liable to be quashed.

10. Per contra, the learned Additional Government Pleader (Pondicherry) for the respondents on the other hand would place reliance on Section 2(e) of the Puducherry Value Added Tax Act, 2007 which defines expression "assessment" to mean determination of business turnover of a dealer in the prescribed manner to ascertain the tax liablility under the Act by self-reassessment, re-assessment and assessment by scrutiny and best judgment assessment.

11. In this connection, the learned Additional Government Pleader (Pondicherry) for the respondents has placed reliance on the decision of this Court in the case of **M/s.Murugan & Co** vs. **The Union of India and Another**, rendered in W.P.No.15165 of 2018 and etc., batch dated 04.11.2019. Specifically a reference was made to paragraph 21 of the said order, which reads as under:-

> ***"In this case, it is seen that summons in Form-PP for the years 2011-12 to 2013-14 were issued on 07.11.2014 and again on 04.01.2016, wherein and whereby the assessee was called upon to produce certain documents with reference to an enquiry under the PVAT Act, 2007, in respect of assessment years 2011-12 to 2014-15. Therefore, the above summons, which is otherwise called as notice calling upon the petitioner to produce the documents for the purpose of assessment in respect of those assessment years, are to be construed as the commencement of assessment proceedings. When the above said notices were issued before the expiry of three years, this Court is of the view that the consequent Pre-assessment notices impugned in these writ petitions are not barred by limitation and therefore, Section 24(5) is not attracted in these cases in any manner. Needless to state that it is for the petitioner to participate in the assessment process by filing their objection to the notice of proposal and raise all the contentions before the Assessing Officer, as this Court is not expressing any view on the merits of the same, since as these writ petitions are disposed of only by considering the question as to whether the impugned notices are barred by limitation."***

12. It is submitted that there also the re-assessment notice was challenged. The Court had taken a view that assessment started with the summons. It is further submitted that the said decision was also upheld by the Court on 06.03.2020.

13. The learned Additional Government Pleader (Pondicherry) for the respondents has also placed reliance on Section 47 of the Puducherry Value Added Tax Act, 2007 and submits that petitioner has an alternate remedy before the Appellate Commissioner and therefore on this count also the present writ petition is liable to be dismissed.

14. The learned Additional Government Pleader (Pondicherry) for the respondents has also relied on the decision of this Court in a batch of writ petitions in the case of **M/s.Sri Sathya Jewellery** vs. **The Principal Commissioner of Customs**, rendered in W.P.No.3144 of 2016 and etc., batch on 15.04.2021.

15. That apart, the learned Additional Government Pleader (Pondicherry) for the respondents submits that repeatedly summons were served on the petitioner to produce the documents on the Assessment Years 2011-2012 to 2013-2014 starting from10.05.2015 with a final summons dated 05.10.2015 & 13.03.2017 for the Assessment Year 2015-2016 followed by a letter issued by the first respondent dated 11.09.2017 asking the petitioner to revise the returns for the assessment years in question.

16. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader (Pondicherry) for the respondents.

17. The date of the notice dated 09.08.2018 which was subject matter of challenge before this Court in W.P.No.10998 of 2019 stood decided by an order dated 25.11.2021. The petitioner has not challenged the same in the manner known to law.

18. The Assessing Officer was thereafter merely required to pass assessment order based on the notice issued on 09.08.2018. The petitioner was to meet out the allegations in the notice on merits. There was no scope for entertaining any question of limitation merely because notice dated 19.04.2022 was issued.

19. The first respondent has merely issued a notice on 19.04.2022 which has now given a reason to the writ petitioner to state that the proceedings are time barred. This stand of the petitioner cannot be accepted. The petitioner was merely required to meet out the grounds in the Show Cause Notice dated 19.04.2022 which is a continuation of the proceeding initiated on 09.08.2018 on 01.04.2014. The petitioner has an appellate remedy before the Appellate Commissioner in terms of Section 47 of the Puducherry Value Added Tax Act, 2007.

20. Therefore, this writ petition is dismissed with the liberty to file statutory appeals before the Appellate Commissioner under Section 47 of the Puducherry Value Added Tax Act, 2007. If such appeals are filed by

the petitioner within a period of thirty (30) days from the date of receipt of a copy of this order subject to other mandatory requirements of the Act, the Appellate Commissioner shall dispose the same on merits.

21. These Writ Petitions stand dismissed with the above liberty. No costs. Consequently, connected miscellaneous petitions are closed.

30.08.2023

Neutral Citation: Yes/No
Index : Yes/No
Speaking/Non-Speaking Order
rgm

To

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   GD-1,
   Commercial Tax Department,
   Puducherry.

2. The Commercial Tax Officer,
   Enforcement and Intelligence Wing,
   100 Feet Road,
   Ellapillaichavadi,
   Puducherry – 605 005.

C.SARAVANAN, J.

rgm

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