IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.14787 of 2021
and
W.M.P. Nos.15671 and 15672 of 2021

M/s.Jayam Refineries,
Rep.by its Partner – S.Kaja Mohideen,
No.41B-50, 50 Feet, Pumping Station Road,
Thirunagar Colony,
Erode 638 003.
Erode District. ... Petitioner

v.

The Assistant Commissioner [ST][FAC],
Park Road Circle,
Erode,
Erode District. ... Respondent

Prayer: Writ Petition is 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 its impugned proceedings made in TIN:33392862056/2011-12 dated 16.04.2021 quash same.

For Petitioner : Mr.S.Rajasekar

For Respondent : M/s.E.Ranganayaki,
Additional Government Pleader

ORDER

The writ petition is filed challenging the impugned proceeding dated 16.04.2021 on the premise that it is barred by limitation.

2. The petitioner is running a refinery at Erode. The petitioner had reported a sales turnover of Rs.90,78,100/- in the monthly returns in Form I for the assessment year 2011-12. It is submitted by the learned counsel for the petitioner that in terms of Section 22(2) of the Tamil Nadu Value Added Tax, 2006 (hereinafter referred to as “TNVAT Act”) the assessee shall be deemed to have been assessed on 31.10.2012 for the assessment year 2011-12, if no assessment is made prior thereto. In view of the above deeming, the petitioner ought to have been deemed to be assessed on 31.10.2012 for the assessment year 2011-12.

2.1. A show cause notice dated 14.09.2015 was issued proposing to revise the assessment on the premise that they have not disclosed certain transactions of sales. The dealer wise details of sales allegedly suppressed was set-out in the notice as under:

S.No.	***TIN***	***Dealer Name***	***Purchase Turnover***
1.	33141083844	Golden Enterprises	1,52,500.00
2.	33230946103	Euro Petroleum	10,00,000.00
3.	33321481736	Mahalakshmi Lubricants	8,05,000.00
4.	33491702754	Priya Petro Products	47,12,000.00
5.	33693063360	Vasantha Oil Processing	34,08,600.00
Total Purchase Value of other dealers			1,00,78,100.00

2.1. The petitioner responded to the above notice by filings its objection / reply dated 02.11.2015. The assessment order dated 25.01.2016 came to be passed confirming the proposal. The same was challenged by way of appeal before the Appellate Deputy Commissioner (CT) (FAC), Erode in AP.No.43 of 2016 dated 07.04.2017, who partly allowed, partly dismissed and partly modified the above appeal.

2.2. Thereafter, a 2nd notice dated 01.03.2021 came to be issued proposing to reassess, on the premise that in terms of the AG's Audit purchase effected from TANGEDCO (Tamil Nadu Generation of Electrical and Distribution Corporation) for Rs.6,43,725-00 during the year 2011-12 is not accounted for in Annexure 1 of the Form I returns filed for the above year. A reply was filed on 30.03.2021 wherein the petitioner had submitted that the revision is barred by limitation inasmuch as any revision under 27 of the TNVAT Act for the assessment year 2011-12 ought to be made within a period of 5 years from the date of assessment i.e., on or before 24.01.2021 reckoning the limitation from the order dated 25.01.2016. The notice having been issued subsequent to the expiry of the period of limitation of 5 years prescribed under Section 27 of the TNVAT Act on 01.03.2021, was submitted as barred by limitation.

2.3.The impugned order of assessment came to be passed on the premise that the assessee had reckoned the limitation of 5 years from the date of assessment order dated 25.01.2016 overlooking the fact that the period of limitation has been extended to 6 years vide Act 23 of 2012 effective from 19.06.2012 and thus proceeded to reject the objections of the assesee as being barred by limitation on the premise that the extended period of limitation of six years would be available to the respondent to exercise its power of reassessment under Section 27 of the TNVAT Act and thus limitation if reckoned from 25.01.2016 would expire on 25.01.2022.

3. It is submitted by the learned counsel for the petitioner that if one takes into account Section 22(2) of the TNVAT Act and the deeming contained therein, assessment ought to deemed to have been made on 30.10.2012. Thus the limitation under Section 27 of the TNVAT Act of 6 years to reassess would expire on 30.10.2018. The present notice and the subject matter of the present revision of assessment viz., alleged suppression of purchase effected from TANGEDCO was not the subject matter of any assessment prior to the issuance of notice dated 01.03.2021, thus the reassessment of the said item / turnover ought to be initiated within a period of 6 years form the date of order of assessment, which in the instant case is the deemed assessment on 31.10.2012.

It was thus submitted that impugned proceeding is barred by limitation. That limitation goes to the root of jurisdiction, the impugned proceedings are thus a nullity.

4. To the contrary it was submitted by the learned counsel for the respondent by placing reliance on the amendment vide Act 23 of 2012 that 6 years period is available to the assessing officer which ought to be reckoned from the order dated 25.01.2016 i.e., order of assessment and thus the impugned proceedings is not barred by limitation.

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

6. This Court finds that the submission of the respondent that limitation must be reckoned from the date of assessment i.e., 25.01.2016 is misconceived. The above submission overlooks the fact that in view of the deeming contained in Section 22 of the TNVAT Act the petitioner must be deemed to have been assessed on 31.10.2012. In view thereof, the order dated 25.01.2016 itself is a reassessment traceable to Section 27 of the TNVAT Act. The present proceeding is also traceable to Section 27 of the TNVAT Act. Though exercise of power of assessment / reassessment under Section 27 of the TNVAT Act would not result in exhaustion of the power and it is open to exercise the power vested under Section 27 of the TNVAT Act on more than one occasion.

However, it must be borne in mind that any exercise of power under Section 27 of the TNVAT Act would have to be made within the stipulated period i.e., six years from the date of original / deemed assessment, in the present case deemed assessment on 31.10.2012. In other words, though there is no limitation as to the number of occasions the power of assessment / reassessment under Section 27 of the TNVAT Act may be exercised. However, any such exercise ought to be made within the period of six years from the date of original assessment including deemed assessment as stipulated under Section 27 of the TNVAT Act.

7. It was submitted by the learned counsel for the respondent that the petitioner having stated in its objection that the limitation would expire only on 24.01.2021, in other words, when the petitioner itself had reckoned the limitation from the date of the order of assessment on 25.01.2016, it shall not be open to the petitioner now to contend that the limitation would have to be reckoned from the date of the deemed assessment. I am afraid that the above submission is also misconceived inasmuch as consent, waiver nor acquiescence would confer assessing authority with jurisdiction which it otherwise does not possess nor extend the period of limitation of 6 years stipulated under the Act. Thus the above objection is also liable to be rejected. In this regard, it may be useful to refer to the following judgments of the Hon'ble Supreme Court:

a. CIT v. Alagendran Finance Ltd., (2007) 7 SCC 215 : 2007 SCC OnLine SC 944 at page 224:

" 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)

b. Foreshore Coop. Housing Society Ltd. v. Praveen D. Desai, (2015) 6 SCC 412 : (2015) 3 SCC (Civ) 333 : 2015 SCC OnLine SC 302 at page 430

*"**45.** The term "jurisdiction" is a term of art; it is an expression used in a variety of senses and draws colour from its context. Therefore, to confine the term "jurisdiction" to its conventional and narrow meaning would be contrary to the well-settled interpretation of the term. The expression "jurisdiction", as stated in Halsbury's Laws of England, 4th Edn., Vol. 10, Para 715, is as follows:*

"715. Meaning of 'jurisdiction'.—By 'jurisdiction' is meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted, and may be extended or restricted by similar means.

If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the claims and matters of which the particular court has cognisance, or as to the area over which the jurisdiction extends, or it may partake of both these characteristics."

c. Supdt. of Taxes v. Onkarmal Nathmal Trust, (1976) 1 SCC 766 :

*"**28.** In the present case, the respondent cannot be said to have waived the provisions of the statute. There cannot be any waiver of a statutory requirement or provision which goes to the jurisdiction of assessment."*

d. Harshad Chiman Lal Modi v. DLF Universal Ltd., (2005) 7 SCC 791 : 2005 SCC OnLine SC 1381 at page 803

*"**30.** We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction over the subject-matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject-matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is a nullity."*

e. Halsbury's Laws of England, (4th Edn.), Reissue, Vol. 10, para 317, it is stated:

"317. Consent and waiver.—Where, by reason of any limitation imposed by a statute, charter or commission, a court is without jurisdiction to entertain any particular claim or matter, neither the acquiescence nor the express consent of the parties can confer jurisdiction upon the court, nor can consent give a court jurisdiction if a condition which goes to the root of the jurisdiction has not been performed or fulfilled. Where the court has jurisdiction over the particular subject-matter of the claim or the particular

parties and the only objection is whether, in the circumstances of the case, the court ought to exercise jurisdiction, the parties may agree to give jurisdiction in their particular case; or a defendant by entering an appearance without protest, or by taking steps in the proceedings, may waive his right to object to the court taking cognizance of the proceedings. No appearance or answer, however, can give jurisdiction to a limited court, nor can a private individual impose on a judge the jurisdiction or duty to adjudicate on a matter. A statute limiting the jurisdiction of a court may contain provisions enabling the parties to extend the jurisdiction by consent."

7.1. Thus, the submission of the learned counsel for the respondent that by participating in the assessment proceeding, the petitioner must be understood to have waived his right to question the impugned proceeding which is otherwise barred by limitation, is unsustainable. Since, limitation relates to jurisdiction which cannot be conferred by consent, waiver or acquiescence. The impugned order being barred by limitation is thus a nullity.

8. In view of the above, this Court finds that the impugned proceeding is barred by limitation and thus the impugned proceeding is set aside. The writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

15.09.2023

Index: Yes/No
Speaking order / Non speaking order
shk

MOHAMMED SHAFFIQ, J.

shk

To:
The Assistant Commissioner [ST][FAC],
Park Road Circle,
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Erode District.

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