IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.16760 and 16762 of 2021 and
W.M.P. Nos.17725 and 17726 of 2021

Tvl.Vishnavidavi Textiles Tiruppur Pvt Ltd.,
Represented by its Managing Director,
Sri.Vivek Jayachandran,
No.30/43, S.V.Colony, 2nd Street Exten,
P.N.Road, Tiruppur 641 602. .. Petitioner in both W.P.s

Vs.

The State Tax Officer,
Lakshmi Nagar Circle,
Tiruppur. ..Respondent in both W.P.s

PRAYER in W.P.No.16760 of 2021 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records on the files of the respondent in TIN: 33112504765/2012-13 dated 29.01.2021 and quash the same as being without jurisdiction, authority of law and beyond the prescribed period of limitation of six years.

PRAYER in W.P.No.16762 of 2021 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records on the files of the respondent in TIN: 33112504765/2013-14 dated 29.01.2021 and quash the same as being without jurisdiction, authority of law and beyond the prescribed period of limitation of six years.

For Petitioner in both W.P.'s : Mr.P.Rajavelu
For Respondent in both W.P.'s : Mr.Prashanth Kiran Government Advocate

COMMON ORDER

The short question that arises for consideration in these writ petitions is that the revision of assessment under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "the Act") is barred by limitation and thus a nullity.

2. The petitioner is a dealer registered under the TNVAT Act and filed its monthly returns for the assessment years 2012-13 and 2013-14. It is submitted that in view of the deeming contained in Section 22(2) of the Act, the assessment must be deemed to have been made on 31.10.2013 and 31.10.2014 for the assessment years 2012-13 and 2013-14. That being the case, the limitation of six years from the date of order of assessment expires on 31.10.2019 and 31.10.2020 for the assessment years 2012-13 and 2013-14. However, admittedly the notice initiating reassessment under Section 27 of the Act was issued only on 20.11.2020 which is beyond the period stipulated under Section 27 of the Act. It was thus submitted that the impugned proceedings are

barred by limitation and wholly without jurisdiction and is a nullity.

3. To the contrary it was submitted by the learned counsel for the Respondent that the impugned orders are appellable in view of availability of alternative remedy the writ petition ought not to be entertained.

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

5. This Court is conscious of the fact that writ petition under Article 226 of the Constitution of India would not be entertained normally if statutory remedy is availed. However, existence of alternate remedy is not an embargo or an absolute bar to exercise power under Article 226 of the Constitution of India but a self-imposed restriction and the following circumstances viz., violation of principles of natural justice or lack of jurisdiction or error apparent on the face of the record are some of the exceptions carved out to the rule of alternate remedy for exercise of discretion under Article 226 of the Constitution of India.

6. I find that there is merit in the submission of the learned counsel for the petitioner that Section 27 of the Act prescribes the time limit of 6 years from

the date of order of assessment for initiation of reassessment which as stated above would expire on 31.10.2019 and 31.10.2020 respectively for the assessment years namely 2012-13 and 2013-14. The notice having been issued for reassessment only on 20.11.2020 is thus barred by limitation. As a result, the impugned orders of assessment made pursuant to the above notices are one without 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.,* reported in *(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 above, the impugned orders are set aside. The writ petitions are allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

15.12.2023

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
Spp

MOHAMMED SHAFFIQ, J.

Spp

To:
The State Tax Officer,
Lakshmi Nagar Circle,
Tiruppur.

W.P. Nos.16760 and 16762 of 2021 and W.M.P. Nos.17725 and 17726 of 2021

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