# IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 23.11.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.P.No.16756 of 2021**
**and**
**W.M.P.No.17717 of 2021**

Tvl.Pandian Agencies
Represented by its Propreitor
S.Nithyanandan
No.631, Poonamalle High Road,
Arumbakkam,
Chennai 600 106. ... Petitioner

Vs.

Assistant Commissioner (ST)
Arumbakkam Assessment Circle,
(Formerly known as Vadapalani -I Assessment Circle)
F-50, 2nd Floor, 1st Avenue,
Annanagar,
Chennai 600 102. ... Respondent

**PRAYER**: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondent in the notice dated 12.07.2021 in TNGST 1461528/2005-06 and quash the same and direct the respondent to refund a sum of Rs.1,03,803/- paid by the petitioner vide receipt No.0196372 dated 03.09.2007.

For Petitioner : Mr.Adithya Reddy

For Respondent : Ms.Amrita Dinakaran,
Government Advocate

**ORDER**

The writ petition is filed challenging the notice dated 12.07.2021 issued pursuant to the order of the Appellate Deputy Commissioner (CT)-III in A.P.No.168/2007 dated 14.09.2009 in relation to the assessment year 2005-06 whereby, it observed as under:

> "*The Enforcement Officers had arrived the difference of sale value with reference to the book of accounts and Balance Sheet for the year 2005-06 The purchase of Rs. 1,05,02,632/- adopted by the Inspecting Officers for reconciliation of stock position is not correct. The actual figures is Rs. 1,02,51,540/- without discount and that discount for the period from April 2005 to December 2005 was given by the suppliers only in December 2005 out of which the discount for the period from 1.4.2005 to the inspection date of 15.6.2005 was Rs. 4,25,620/- and hence after discount the purchase value was Rs. 98,25,920/-. If the correct figure is adopted, the stock difference would not exist. It is seen from the assessment order that the Assessing Officer has not considered the issue of deduction of discount in the computation of stock variation. The observation of the Assessing Officer in Paragraph-14 of the assessment order that the dealers' contentions were examined and found not acceptable is vague and not specific.*

*Since the appellant had raised a specific issue relating to discount allowed on purchases, the Assessing Officer ought to have considered the same on merits".*

2. The petitioner is a dealer of cement, who suffered an order of assessment dated 30.03.2007 alleging suppression of sales to the extent of Rs.12.38 lakhs. The petitioner preferred an appeal before the Appellate Deputy Commissioner (CT)-III by remitting pre-deposit on the premise that the assessment order had proceeded on the basis of sales suppression without verifying books of account and the stocks available. The Appellate Authority viz., Appellate Deputy Commissioner (CT) –III had set aside the disputed turnover and remitted the matter to the respondent for fresh consideration vide order dated 14.10.2009. It is not disputed that pursuant to the order of remission by the Appellate Authority, no proceedings were initiated until the impugned notice dated 12.07.2021 came to be issued after almost 12 years since the order of the remand.

3.It is the submission of the learned counsel for the petitioner that the impugned notice is arbitrary inasmuch as it has been issued after an unreasonable delay of 12 years.

4.To the contrary, the learned counsel for the respondent submitted the reason for delay by placing reliance on the counter which reads as under:

> "*Re-organization of Assessment Circle was implemented from 01.08.2014. Consequently, the newly formed Arumbakkam Assessment Circle is functioning with effect from 01.08.2014. Tvl.Pandian Agencies become assessee in the newly formed Arumbakkam Assessment Circle. The newly formed Arumbakkam Assessment Circle had received the records from the erstwhile Vadapalani Assessment Circle.*
>
> *On receipt of the records from the erstwhile office of the Assistant Commissioner (CT), Vadapalani Circle, the available assessment files of Tvl.Pandian Agencies for the years 2006-07, 2007-08, 2008-09 & 2009-10 were revised as per the orders of the Appellate Deputy Commissioner (CT)-III.*
>
> *In respect of the assessment year 2005-06, the assessment file was not received from the erstwhile Vadapalani Circle. Hence the revision of assessment could be passed in time. This was informed to the Joint Commissioner (CT), Chennai – 6 vide this office Ref. No.524/2011/A3 dated 07.07.2021 and requested instructions.*"

5. After considering the submissions made by both parties, I am unable to accept the submission made by the learned counsel for the respondent that inasmuch as there is no time limit for giving effect to the Appellate Authority order, Court cannot read any limitation for complying with the order / direction of the Appellant Authority in the absence of any

time lines being fixed by the Appellate Authority. 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 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."*

6. In view of the above, the prelimary objection raised by the respondent that the petitioner ought to respond to the notice is rejected. I find merit in the submission made by the learned counsel for the petitioner

that the impugned notice suffers from the vice of being unreasonable and arbitrary inasmuch as it proposes to give effect to the order of remand 12 years after the order of the Appellate Authority, which is clearly unreasonable thereby falling foul of Article 14 of the Constitution.

7. Thus, the impugned notice is setaside and the writ petition stands allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

**23.11.2023**

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

To:

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**<u>MOHAMMED SHAFFIQ, J.</u>**

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