IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.19959, 19964, 19968 and 19971 of 2021
and W.M.P. Nos.21218, 21222, 21224 and 21226 of 2021

UCAL Fuel System Limited,
A-98, 99, 100, PIPDIC Industrial Estate,
Mettupalayam,
Puducherry 605 009. ... Petitioner in all petitions

v.

Commercial Tax Officer – IAC,
Room No.37,
Office of the Commercial Tax Officer – IAC,
III Floor, Commercial Tax Complex,
(Near Indira Gandhi Statue),
Puducherry – 605 005. ... Respondent in all petitions

Prayer in W.P.No.19959 of 2021: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus calling for the impugned pre-assessment notice dated 19.07.2021 issued vide proceedings in No.34630007925/72/CST/2014-15 on the file of the Respondent and quash the same as they propose to undertake assessment under the Central Sales Tax Act, 1956 and the Rules made thereunder for the year 2014-15, which are barred by limitation under Rule 5(6) of the CST (P) Rules and further direct the respondent not to under take the CST Assessment for the impugned period.

<u>Prayer in W.P.No.19964 of 2021:</u> Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus calling for the impugned pre-assessment notice dated 19.07.2020 issued vide proceedings in No.34630007925/72/CST/2015-16 on the file of the Respondent and quash the same as they propose to undertake assessment under the Central Sales Tax Act, 1956 and the Rules made thereunder for the year 2015-16, which are barred by limitation under Rule 5(6) of the CST (P) Rules and further direct the respondent not to under take the CST Assessment for the impugned period.

<u>Prayer in W.P.No.19968 of 2021:</u> Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus calling for the impugned pre-assessment notice dated 10.07.2020 issued vide proceedings in No.34630007925/72/CST/2016-17 on the file of the Respondent and quash the same as they propose to undertake assessment under the Central Sales Tax Act, 1956 and the Rules made thereunder for the year 2016-17, which are barred by limitation under Rule 5(6) of the CST (P) Rules and further direct the respondent not to under take the CST Assessment for the impugned period.

<u>Prayer in W.P.No.19971 of 2021:</u> Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified

Mandamus calling for the impugned pre-assessment notice dated 10.07.2020 issued vide proceedings in No.34630007925/72/CST/2017-18 on the file of the Respondent and quash the same as they propose to undertake assessment under the Central Sales Tax Act, 1956 and the Rules made thereunder for the year 2017-18, which are barred by limitation under Rule 5(6) of the CST (P) Rules and further direct the respondent not to under take the CST Assessment for the impugned period.

For Petitioner in all petitions : Mr.Ramnath Prabhu for
Mr.Y.Prakash

For Respondent in all petitions : Mr.B.Ramaswamy,
Additional Government Pleader
(Pondicherry)

COMMON ORDER

This batch of writ petitions were filed challenging the following pre-assessment notices on the premise that the impugned notices are barred by limitation in terms of Rule 5 (6) of the Central Sales Tax (Puducherry) Rules 1967 (hereinafter referred to as "CST (P) Rules"). The Following table is relevant:

S.No.	*W.P.Nos.*	*Assessment year*	*Prayer*	*Date of issuance of pre-assessment notice*
1.	W.P.No.19959 of 2021	2014-15	Challenging the pre-assessment notice dated 19.07.2021	10.07.2020
2.	W.P.No.19964 of 2021	2015-16	Challenging the pre-assessment notice dated 19.07.2020*	10.07.2020
3.	W.P.No.19968 of 2021	2016-17	Challenging the pre-assessment notice dated 10.07.2020	10.07.2020
4.	W.P.No.19971 of 2021	2017-18	Challenging the pre-assessment notice dated 10.07.2020	10.07.2020

2. Before I proceed further, it may be relevant to set out the brief facts.

2.1. The petitioner is engaged in the business of manufacture and sale of parts and components of automotive fuel system viz., carburetor assembly. The petitioner was a dealer registered under Puducherry Value Added Tax Act, 2007 (hereinafter referred to as "PVAT Act") and Central Sales Tax Act, 1956 (hereinafter referred to as "CST Act") during the relevant period. The petitioner had effected sales of carburetor etc., by way of interstate sales and also by way of export during the relevant assessment

* appears to be a typographical error with regard to AY 2015-16 wherein instead of 19.07.2021 it has been typed as 19.07.2020.

years. Admittedly, the petitioner had submitted its monthly returns under PVAT and CST Act respectively. The petitioner had claimed concessional rate of tax on the interstate sale in terms of Section 8(1) read with 8(3) and Section 5(3) of the CST Act. The above claims of concessional rate was not supported by the appropriate statutory declaration forms in Form "C" and "H".

2.2. Notices dated 10.07.2020 were issued for the assessment years 2014-15, 2015-16, 2016-17 and 2017-18 respectively directing reversal of Input Tax Credit which is stated to have been claimed in excess of its entitlement in terms of Section 16(1)(ii) of the PVAT Act which provides that inputs transferred in the same form or otherwise, and such transfer outside the Union Territory of Puducherry is otherwise than by way of sale, input tax credit shall be allowed for such inputs only in excess of the rate prescribed under Section 8(1) of the CST Act, whereas, the petitioner had claimed the entire tax paid on its purchases as input tax credit. Initially summons dated 14.09.2017 for the assessment years 2014-15, 2015-16 and 2016-17 and on 20.09.2018 for the assessment year 2017-18 were issued calling upon the petitioner to produce the various documents such as purchase and sales invoices, ITC claimed details along with invoice, Bank statement, Form "CC" Income Tax statement / declarations forms C/H/F/I for Concession availed / payment received details.

2.3. It may be relevant to note that for the assessment years 2014-15 and 2015-16 pre-assessment notices were issued on 10.07.2020 prior to the impugned notice dated 19.07.2021 for the assessment year 2014-15 and 19.07.2020 for the assessment year 2015-16 respectively. (There appears to be a typographical error with regard to assessment year 2015-16 wherein instead of 19.07.2021 it has been typed as 19.07.2020. I shall however refer to the impugned notice as 19.07.2021 for the assessment year 2015-16 as well, though the prayer in the writ petition proceeds on the basis that the impugned notice is issued on 19.07.2020). Thereafter, the impugned notice dated 19.07.2021 and 19.07.2020 was issued for the assessment years 2014-15 and 2015-16 respectively. For the assessment years 2014-15 and 2015-16, the notice dated 19.07.2021 is under challenge and for the assessment years 2016-17 and 2017-18, the notice dated 10.07.2020 is under challenge. The impugned pre-assessment notice dated 19.07.2021 for the assessment years 2014-15 and 2015-16 and 10.07.2020 for the assessment years 2016-17 and 2017-18 respectively were issued wherein it was proposed to levy tax on turnovers not supported by declaration forms at higher rates in terms of Section 8(2) of the CST Act, rejecting the claim of concessional rate of 2% and also proposing to disallow the claim of input tax credit. Thereafter, the petitioner *vide* letters dated 22.07.2020 and 28.07.2020 requested time to submit the form “C”. The petitioner had also filed letters dated 28.07.2020 and 28.08.2020 wherein it was stated that “C” declaration forms on interstate sales and shipping documents in support of their claim of export for the various years was being submitted. Further, some more declaration forms and documents were filed by the petitioner on 07.09.2020, 21.09.2020, 09.11.2020 in support of the claim of concessional rate and exemption as evident from the following extracts:

<u>Letter dated 07.09.2020:</u>

> *“We have already submitted a substantial value of Rs 33.7 Crs of Documents (Invoices & Bill of Lading) for the exports done by us from the period 2010-11 (Rs 13 16 Crs), 2011-12 (Rs 12.5 Crs), 2012-13 (Rs 3.7 Crs), 2013-2014 (Rs 0.77 Crs), 2014-2015 (Rs 2.25 Crs), 2015-2016 (Rs 0.86 Crs), 2016-2017 (Rs 0.15 Crs), & 2017-2018 (Rs 0.30 Crs) on 06th August 2020.*
> *we uploaded a substantial value of C forms for a value of Rs 10.5 Crores*

on 07th August in the VAT portal and a letter in this regard already submitted to your office on 12-08-2020.
Now we uploaded a substantial value of form-F for a value of Rs 4.7 Crs (2012-13 (Rs. 1.77 Crs), 2015-16 (Rs. 0.096 Crs), 2016-17 (Rs.2.51 Crs) & 2017-18 (Rs. 0.33 Crs) on 05" September in the VAT portal and request you to acknowledge and approve the same.

<u>Letter dated: 21.09.2020</u>

Now we uploaded a substantial value of form-C for a value of Rs 32.93 Crs 2010-11 (Rs.5.89 Crs). 2011-12 (Rs 4.92 Crs), 2012-13 (Rs. 10. 76 Crs), 2013-14 (Rs.1.11 Crs), 2014-15 (Rs. 1.87 Crs), 2015-16 (Rs.1.91 Crs), 2016-17 (Rs.11.33 Crs), in the VAT portal and request you to acknowledge and approve the same.

<u>Letter dated: 09.11.2020:</u>

Now we uploaded a substantial value of form-H for a value of Rs 5.27 Crs 2010-11 (Rs.0.93 Crs), 2011-12 (Rs.0.90 Crs), 2012-13 (Rs.0.47 Crs), 2013-14 (Rs.0.33 Crs). 2014-15 (Rs.0.96 Crs), 2015-16 (Rs.0.45 Crs), 2016-17 (Rs.1.21 Crs), in the VAT portal and request you to acknowledge and approve the same."

While so, the petitioner had filed the present writ petitions challenging the impugned notices as being barred by limitation.

3. <u>Case of the Petitioner:</u>

a. The assessments are barred by limitation inasmuch as Rule 5(6) of the CST (P) Act requires the completion of assessment by way of single order, the tax or taxes payable under the Act for the preceding year or for the year to which the return submitted relates. Thus, the impugned pre-assessment notice issued after more than 5 years from the first notice is barred by limitation.

b. That limitation relates to jurisdiction. Proceedings barred by limitation are a nullity, thereby, warranting interference under Article 226 of the Constitution of India.

c. Thus the impugned notice invoking Section 9 of the CST Act r/w Section 24 of the PVAT Act is grossly misconceived inasmuch as the limitation in respect of the CST Act would be governed by Central Sales Tax (Pondicherry) Rules, 1967 framed in exercise of powers conferred under sub-Sections (3), (4) and (5) of Section 13 of the CST Act and in particular Rule 5(5) and 5(6) of the Central Sales Tax (Pondicherry) Rules, 1967.

4. Case of the Respondents:

a. It was submitted by the learned counsel for the respondents that the writ petitions itself ought not to be entertained as it is pre-mature and it is always open to the petitioner to raise the issue of limitation and jurisdiction and all other aspects before the Assessing Authority in response to the show cause notice.

b. Importantly, summons having been issued on 14.09.2017 and 20.09.2018, the same must be understood as initiation of Assessment proceedings and once assessment proceedings are initiated within the prescribed period, the culmination by way of assessment order subsequent to the prescribed would not by itself render the assessment proceeding barred by limitation inasmuch as limitation prescribed is with reference to initiation of assessment and not passing of assessment order. Reliance was sought to be placed on the judgment of this Court in W.P.Nos.15165 to 15168 of 2018 dated 04.11.2019 in support of the contention that the term “assessment” cannot be construed only as an order of assessment but is comprehensive and must be taken to denote the entirety of the assessment proceedings. The writ appeal filed against the above order of the learned Judge was rejected in W.A.Nos.262, 263, 270 & 272 of 2020 dated 06.03.2020 by the Division Bench of this Court stating that the objection ought to be placed before the Assessing Authority who shall proceed to decide the issue after affording an opportunity of personal hearing.

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

6. Before proceeding further, it may be necessary to examine the preliminary objection raised by the Revenue that non-interference at the stage of show cause notice under Article 226 of the Constitution of India being the normal rule, this batch of writ petitions are liable to be rejected. It was submitted by the learned counsel for the petitioner in response that the question here is that the impugned notices are barred by limitation thus lacking jurisdiction and would fall within the exceptions carved out for entertaining the writ petitions.

7. Though the question here relates to one of limitation, this Court is not inclined to entertain the batch of writ petitions at the stage of show cause notice for it is trite law that though there is no absolute bar or embargo against entertaining writ petitions against notices, however, interference should be in rare cases and not as a matter of routine. Though, the restriction is self imposed it has been consistently held that High Court shall exercise restraint in entertaining writ petitions under Article 226 of the Constitution of India at the stage of show cause notice. This Court is of the view that whether the notices are barred by limitation or not can be adjudicated by the authority issuing the notice and it is open to the petitioner

to submit its objection to the proposal including the plea of limitation. In this regard, it may be relevant to refer to the following judgments of the Hon'ble Supreme Court;

a) *Malladi Drugs & Pharma Ltd. v. Union of India*, (2020) 12 SCC 808 : 2004 SCC OnLine SC 358, wherein it was held as under:

> ***"3.*** *The High Court's order was passed way back in 1997. Neither party knows whether the Department has proceeded further and/or whether any order has been passed pursuant to the show-cause notice. Even otherwise, in our view, the High Court was absolutely right in dismissing the writ petition against a mere show-cause notice. We see no reason to interfere. The appeals stand dismissed. There will be no order as to costs."*

b) Special Director v. Mohd. Ghulam Ghouse, reported in *(2004) 3 SCC 440*, wherein it was held as under:

> ***"3.*** *According to the appellants, the writ petition is thoroughly misconceived as it challenges a show-cause notice and in any event the final relief as sought for by Respondent 1-writ petitioner in relation to the show-cause notice should not have been granted by an interim order of the nature passed by withholding any further action in this regard. It was pointed out that Respondent 1 is responsible for financial irregularities involving nearly Rs 270 crores and documents have been forged, accounts have been manipulated; and in any event Respondent 1 was free to canvass all the points that were taken in the writ petition before the authority issuing the notice. Instead of doing that, he rushed to the High Court and unfortunately the High Court not only entertained the writ application but also granted interim relief which was in effect allowing the writ petition even before it was heard on merits. The final relief sought for itself, in substance, was granted by the interim order. There was clear violation of the provisions of the Foreign Exchange Regulation Act, 1973 (in short "the FERA") and the Foreign Exchange Management Act, 1999*

(in short "the FEMA"). The Enforcement Directorate has clearly indicated in the notice the various infractions which led to such large-scale illegal transactions of more than Rs 270 crores. Respondent 1 (writ petitioner) was clearly guilty of various provisions of FERA and FEMA. The High Court should have thrown out the writ petition at the threshold."

(emphasis supplied)

8. Limitation is a mixed question of fact and law which is yet another reason as to why this Court is not inclined to entertain the writ petition at the stage of show cause notice. The writ petitions are disposed of with liberty to the petitioners to file their objections within a period of 6 weeks from the date of receipt of a copy of this order, if any such objections are filed, the Respondents shall consider the same after providing the petitioner reasonable opportunity of personal hearing. No costs. Consequently, the connected miscellaneous petitions are closed.

30.08.2023

Index: Yes/No
Speaking (or) Non-Speaking Order
Neutral Citation: Yes/ No
shk/mka

MOHAMMED SHAFFIQ, J.

shk/mka

To:
Commercial Tax Officer – IAC,
Room No.37,
Office of the Commercial Tax Officer – IAC,
III Floor, Commercial Tax Complex,
(Near Indira Gandhi Statue),
Puducherry – 605 005.

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