IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.23241 and 23296 of 2021 and
W.M.P.Nos.24564 and 24537 of 2021

Ply World,
Represented by its Sole Proprietrix
Gayathri Golecha,
No.18, Lokmanya Street East,
R.S.Puram,
Coimbatore 641 002. ... Petitioner in both petitions

v.

The Assistant Commissioner (ST)
R.S.Puram Assessment Circle,
Coimbatore. ... Respondent in both petitions

Common 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 TIN/33331943111/2008-09 and TIN/33941943503/2009-10 dated 03.09.2021 quash the same.

For Petitioner in both petitions : Mr.U.Sriram for Mr.N.Inbarajan

For Respondent in both petitions : Ms.Amrita Dinakaran, Government Advocate.

COMMON ORDER

The Writ Petitions are filed challenging the orders of assessment dated 03.09.2021 made purportedly in exercise of the power under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "TNVAT Act") for the assessment years 2008-09 and 2009-10. The sole ground of challenge is that the impugned orders of assessment under Section 27 of the TNVAT Act are barred by limitation.

2. It is submitted by the learned counsel for the petitioner that as no assessment was made, the deemed provision under Section 22(2) of the TNVAT Act would get attracted. Resultantly, the petitioner is deemed to be assessed for the assessment years 2008-09 and 2009-10 on 30.06.2012 in terms of the proviso to Section 22(2) of the TNVAT Act. Section 27 of the TNVAT Act provides that assessment of escaped turnover or reassessment of the appropriate rate of tax shall be made within a period of six years from the date of assessment. Thus, limitation for invoking power of reassessment / revision under Section 27 of TNVAT Act would expire 6 years from 30.06.2012 i.e., date of deemed assessment on 30.06.2018. The first of the notices proposing to reassess was issued on 28.07.2021 i.e., much after the period of limitation stipulated under Section 27 of

the TNVAT Act had expired. It was thus submitted that the entire proceeding is barred by limitation.

3. To the contrary, it was submitted by the learned counsel for the respondent that the petitioner had not raised question of impugned proceeding being barred by limitation when the notice was issued and had instead submitted their reply wherein the issue of limitation of the assessment orders being barred by limitation, thereby, lacking jurisdiction was not raised. It was thus submitted that having participated in the assessment proceeding, it may not be open to the petitioner to now raise question of assessment being barred by limitation.

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

5. This Court finds merit in the submission of the learned counsel for the petitioner since assessment under Section 27 of the TNVAT Act ought to be exercised within a period of 6 years from the date of order of assessment which in the present case is from the date of deemed assessment i.e.,30.06.2012. The impugned notice having been issued beyond the prescribed period is barred by limitation. Consequently, the impugned order is a nullity and cannot be sustained.

In this regard, it may be useful to refer to the following judgment of the Hon'ble Supreme Court:

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)

6. Insofar as the submission that participating in the proceeding would bar the petitioner from raising the question of limitation also cannot be sustained for jurisdiction cannot be conferred by waiver or acquiescence. Consent, waiver nor acquiescence would confer assessing authority with jurisdiction which it otherwise does not possess nor extend the period of limitation stipulated under the statute. In this regard, it may be useful to refer to the following judgments:

a.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."

b.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.*

c.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.*

d. 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. 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. Thus the impugned orders are barred by limitation and thus a nullity.

8. For the above reasons, the impugned orders are set aside. The writ petitions are allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

08.09.2023

Index: Yes/No
Internet: Yes/No
Speaking order/ Non speaking order
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To

The Assistant Commissioner (ST)
R.S.Puram Assessment Circle,
Coimbatore.

MOHAMMED SHAFFIQ,J.
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