IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.06.2023

PRONOUNCED ON: 27.06.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

WP.Nos.28896 of 2019, 2735 of 2022, 17928, 19920, 19918, 19923, 19925, 19930, 19933, 19921, 19924, 19926, 19928, 19932, 22122, 24645, 24647, 24684 of 2021 & 4418 of 2020
WMP.No.28639 of 2019, 2898 of 2022, 19136, 21168, 21165, 21172, 21177, 21179, 21183, 21170, 21173, 21176, 21178, 21181, 23345, 25930, 25932 & 25979 of 2021 and 5224 of 2020

WP.No.28896 of 2019:

M/s.KAG India Pvt Ltd.
Rep by its Authorised Signatory
Mr.A.L.Balakrishnan
No.2, Brindavan Street
Lakshipuram, Srinivasa Nagar
Perungalathur, Chennai-63 ...Petitioner

Vs.

The Assistant Commissioner (St)
Tambaram Assessment Circle,
No 19- A Siva Shanmugam Salai,
Tambaram, Chennai-45 ...Respondent

Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue aWrit of certiorari to call for the records of the respondent in TIN 33360887104/2011-12 dated 18.03.2019 and quash the same.

WP.Nos.	For Petitioner	For Respondents
28896 of 2019	Mr.V.Sundareswaran	Mr.C.Harsha Raj, learned Additional Government Pleader and Mr.V.Prasanth Kiran, Government Advocate
2735, 24645, 24647, 24684 of 2021	Mr.T.Pramod Kumar Chopda	
17928 of 2021	Mr.B.Raveendran	
19920, 19918, 19923, 19925, 19930, 19933, 19921, 19924, 19926, 19928, 19932 and 22122 of 2021	Mr.K.Thiagarajan	
4881 of 2020	Mr.N.Sriprakash	

COMMON ORDER

The common question that arises for determination in these cases relates to the point of initiation of re-assessment/revision of assessment under the provisions of Section 27 of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act'). It is thus that these matters have been grouped together and disposed vide this common order. There is hence no necessity to refer to the merits of any of the matters and rival submissions have been heard solely on the legal ground. A tabulation of the relevant dates and events is placed below, solely in aid of setting the context for deciding the legal issue:

S. No.	*Name of the assessee*	*Period of assessment*	*Notice*	*Orders*	*Impugned Order*
		2008-2009 (W.P.No.19921 of 2 '021)	*17.02.2020 – Pre assessment notice issued along with*	*Deemed assessment 30.06.2012 (6 year period expires on*	*Assessment order– 20.01.2021*

			demand of reversal of input credit.	*30.06.2018) 20.01.2021 – Order passed under Section 27 of the TNVAT Act*	
	National Traders	*2009-10 (W.P.No.19924 of 2021)*	*12.09.2019 – Pre assessment notice for declarations under the CST Act along with input credit reversal under the TNVAT Act.*	*Deemed assessment 30.06.2012 (6 year period expires on 30.06.2018) 29.03.2021 – Order under Section 27 of the TNVAT Act*	*Assessment order – 29.03.2021*
		2010-2011 (W.P.No.19926 of 2021)	*01.02.2021 – Pre assessment notice for declarations under the CST Act along with input credit reversal under the TNVAT Act.*	*Deemed assessment 30.06.2012 (6 year period expires on 30.06.2018) 27.02.2021 – Order under Section 27 of the TNVAT Act*	*Assessment order – 27.02.2021*
		2012-2013 (W.P.No.19928 of 2021)	*01.02.2021 – Pre assessment notice for declarations under the CST Act along with input credit reversal under the TNVAT Act.*	*Deemed assessment 31.10.2013 (6 year period expires on 31.10.2019) 27.02.2021 – Order under Section 27 of the TNVAT Act*	*Assessment order – 27.02.2021*
		2013-14 (W.P.No.19932 of 2021)	*01.02.2021 – Pre assessment notice for*	*Deemed assessment 31.10.2014 (6 year period*	*Assessment order – 27.02.2021*

			declarations under the CST Act along with input credit reversal under the TNVAT Act.	*expires on 31.10.2020) 27.02.2021 – Order under Section 27 of the TNVAT Act*	
		2006-07 (W.P.No.19930 of 2021)	*12.09.2019 – Proposal to assess the turnover at the local rate with interest at 2% per month.*	*Deemed assessment 30.06.2012 (6 year period expires on 30.06.2018) 29.03.2021 – Order does not mention the provision under which it is passed*	*Assessment order – 29.03.2021*
		2007-08 (W.P.No.19933 of 2021	*26.08.2019 – Proposal to redetermine sales turnover and levy tax at 12.5%.*	*Deemed assessment 30.06.2012 (6 year period expires on 30.06.2018) 20.01.2021 – Order does not mention the provision under which it is passed*	*Assessment order – 20.01.2021*
2	*Qutbi Industrial Supplier*	*2007-08 (W.P.No.22122 of 2021)*	*31.10.2019 – CST Notice 79233/2007-2008 to file Form C Declarations*	*Deemed assessment 30.06.2012 (6 year period expires on 30.06.2018) 02.07.2021 – Order does not mention the provision under which it is passed*	*Assessment order – 02.07.2021*
3		*2010-11 (W.P.No.24647*	*29.05.2020 – Notice*	*Deemed assessment*	*Assessment order –*

	Carpenters Classics India Private Limited	of 2021)	alleging that certain transactions were not reported and proposing maximum penalty under Section 27(1)(c)	30.06.2012 (6 year period expires on 30.06.2018) 01.10.2021 – Order does not mention the section under which it is passed	01.10.2021
		2011-12 (W.P.No.24645 of 2021)	29.05.2020 – Notice alleging that certain transactions were not reported and proposing maximum penalty under Section 27(1)(c	Deemed assessment 31.10.2012 (6 year period expires on 31.10.2018) 01.10.2021 – Order does not mention section under which it is passed	Assessment order – 01.10.2021
		2012-13 (W.P.No.24684 of 2021)	29.05.2020 – Notice alleging that certain transactions were not reported and proposing maximum penalty under Section 27(1)(c)	Deemed assessment 31.10.2013 (6 year period expires on 31.10.2019) 01.10.2021 – Order does not mention under which it is passed	Assessment order – 01.10.2021
	Mohan Enterprises	2014-15 (W.P.No.2735 of 2022)	15.12.2021 – Proposal to redetermine taxable turnover and levy tax at 14.5%	Deemed assessment 31.10.2015 (6 year period expires on 31.10.2021)	Notice – 15.12.2021 – Proposed to redetermine taxable turnover and levy tax at 14.5%
		2007-08 (W.P.No.19925 of 2021)	15.02.2021 – Proposal to reverse the ITC	Deemed assessment 30.06.2012 (6 year period	Assessment order – 31.03.2021

				expires on 30.06.2018) 31.03.2021 - Order does not mention section under which it is passed	
	Supreme Industrial Co.	*2008-09 (W.P.No.19918 of 2021)*	*15.02.2021 – Proposal to reverse the ITC*	*Deemed assessment 30.06.2012 (6 year period expires on 30.06.2018) 31.03.2021 - Order does not mention under which it is passed*	*Assessment order – 31.03.2021*
		2009-10 (W.P.No.19920 of 2021)	*15.02.2021 – Proposal to redetermine sales turnover and levy tax at 12.5%*	*Deemed assessment 30.06.2012 (6 year period expires on 30.06.2018) 31.03.2021 - Order does not mention section under which it is passed*	*Assessment order – 31.03.2021*
		2010-11 (W.P.No.19923 of 2021)	*15.02.2021 – Proposal to redetermine sales turnover and levy tax at 12.5%*	*Deemed assessment 30.06.2012 (6 year period expires on 30.06.2018) 31.03.2021 - Order does not mention section under which it is passed*	*Assessment order – 31.03.2021*
	Kanji Precision Works	*2014-15 (W.P.No.17928 of 2021)*	*19.07.2021- recovery*	*12.06.2018- Revised order of assessment*	*Order dated 15.02.2021*

			notice	*issued 15.02.2021- Impugned Order ordering payment of tax dues*	
	KAG India Private Ltd.	*2011-12 (W.P.No.28896 of 2019)*	*24.12.2018 – Notice for re-assessment*	*25.03.2014 – revision of assessment order under Section 27 of the TNVAT Act 25.03.2015 – Order in first appeal 27.10.2015- Order of the Tribunal 10.09.2019 – order giving effect to order of the appellate authority, impugned order – 18.03.2019*	*Assessment order – 18.03.2019*
	Sree Abishek Pharmacy	*2015-16 (W.P.No.4418 of 2020)*	*21.08.2018 proposal to re-determine the sales turnover and levy tax 5%*	*Deemed assessment 31.10.2016 Dispute is only on rate of tax*	*Assessment order – 09.12.2019*

2. In W.P.No.28896 of 2019, the challenge is to an order dated 18.03.2019 for the period 2011-12. The primary ground on which the proceedings are assailed is the bar of limitation. Hence, it is the contention of the petitioner that the impugned order passed under Section 27, being one of

revision of assessment, ought to have been passed within six years from date of deemed assessment, being 31.10.2018.

3. The first notice for revision of assessment has itself been issued only on 24.12.2018, which is beyond the period of six years and hence, according to the petitioner, the impugned order is liable to be quashed. Per contra, it is the stand of the respondent that an order of regular assessment had been passed on 25.03.2014 and hence, the period of six years would only run from that date. For this purpose, they rely on the provisions of Section 27 of the Act. No counter affidavits have been filed in any of the other writ petitions.

4. The provisions of Section 27 provide for a period of six years from the date of assessment for revision of the assessment and the question that arises in these cases is as to the point of commencement of the six year period. According to the assessee, the period ought to commence from 31st of October of the succeeding year as provided under Section 22(2) of the Act. Per contra, it is the contention of the revenue that the provisions of Section 22(4) provide for the framing of best judgement/regular assessment and thus in cases where an order under Section 22(4) had been passed that would be the point of commencement of limitation of six years.

5. They would also argue that there is no statutory limitation provided for framing of assessment under Section 22(4) of the Act and as such an assesment

may be framed at any time. Further, there is no bar on the number of occasions when revision may be effected. Every subsequent order of revision may be passed at any time within six years from passing of the previous order of assessment.

6. I will address the last submission first. Though technically, there is no bar on the number of re-assessments that may be made, this would not permit unlimited revisions of assessment availing the benefit of limitation set out under Section 27 computed from the last of the assessments, as there would then be no finality of assessment at any stage. That apart, every new round of re-assessment has to relate to an issue that has not been addressed in prior assessment. That is to state that escapement of turnover from tax cannot be premised on the same issue more than once.

7. The petitioners rely on orders of this Court in the case of *Indian Commerce Industries Co. Pvt Ltd. Vs. The Assistant Commissioner (ST),* WP.No.25186 of 2019 dated 29.08.2019 and *Tvl. Pupa Lineraa Vs. The State Tax Officer,* WP.(MD).No.14494 of 2021 dated 27.10.2021 in support of their contentions. In the case of *Indian Commerce Industries* (supra), the writ court reiterated the guardian principle in limitation to the effect that while the bar of limitation would restrict the remedy itself, the right is not extinguished. On application of that principle, the Court set aside the impugned order on the

ground that it was barred by limitation but had directed the respondent to redo the assessment within a fixed time frame.

8. The decision in *Pupa Lineraa* (supra) is really their sheet anchor. The assessment assailed in that case related to the period 2012-13. The return was deemed to have been accepted under Section 22(2) of the Act on 31.10.2013. Thereafter and based on an inspection, an order had been passed on 30.09.2016 under Section 22(4) of the Act. This order was sought to be revised by a notice dated 22.02.2021, which the respondent contended was well within limitation.

9. The notice culminated in an order of revision of assessment dated 30.03.2021 that had been assailed in that writ petition. The assessee therein had argued that limitation of six years would commence from 31st of October itself and that should be taken to be the date of regular assessment. In such an event, limitation would expire on 31.10.2019 and the subsequent notice and proceedings would be held to be barred.

10. To be noted that Section 2 of the TNVAT Act had been amended in 2012 vide Amendment Act 23 of 2012 by insertion of sub-Section (4A), defining assessment to mean *'an assessment made or deemed to have been made under this Act including a re-assessment or revision of assessment'*. It had thus been the contention of the revenue that the term 'assessment' as utilized in Section 27, would connote not just a regular assessment but also a re-

assessment. Two decisions were cited by the revenue, *Deputy Commissioner of Commercial Taxes Vs. H.R. Sri Ramulu,* [(1977) 1 SCC 703] [(1977) 39 STC 177] & *Kundanlal Srikisan Mathura (U.P.) Vs. Commissioner of Sales Tax (U.P.),* [(1987) 1 SCC 684] [(1987) 65 STC 62] for the proposition that limitation must commence from date of order of reassessment and not from the date of original deemed assessment.

11. The learned Judge accepted the challenge holding that

(i) Commencement of limitation for revision of assessment would be 31st of October of the succeeding period.

(ii) In effect, the limitation for passing of an order under Section 22(4) was also held subject to the limitation under Section 22(2) of the Act, being the 31st October of the succeeding year.

(iii) Once an order of assessment is deemed to have been passed under Section 22(2) the question of passing an order under Section 22(4) thereafter does not arise

12. The above order is stated to be pending in writ appeal. Before me, the revenue relies upon the judgement of the Hon'ble Apex Court in *State of Punjab vs. Bhatinda District Coop Milk Producers Union Ltd* (2007 11 SCC 363), and Kerala and Allahabad High Courts in *Parisons Foods (P) Ltd vs. State of Kerala* vs. State of Kerala decided on 12.04.2017 (WA No.1076 of

2013)and *Mass Awash Pvt Ltd vs. Commissioner of Income tax (International Taxation) and another* ([2017] 83 taxmann.com 306 (Allahabad)), respectively.

13.The detailed submissions of all learned counsel have been heard. Going forward, 2015-16 shall be taken to the illustrative year for the purposes of this order. The scheme of assessment under the Tamil Nadu Value Added Tax Act, 2006 is set out under Section 22 onwards. Section 22 provides for a deemed assessment and the procedure to be followed by the authority in that regard. Section 22(1) states that an assessment of a dealer shall be on the basis of its return of turnover submitted as per prescription within the specified period.

14. Section 22(2) states that the assessing authority shall accept the returns submitted if they are in prescribed form and accompanied by prescribed documents as well as proof of payment of tax. Every such dealer shall be deemed to have been assessed for the year on the 31st of October of the succeeding year. Thus, a deemed assessment for 2015-16, shall be dated 31.10.2016.

15.The term 'assessment' has been defined under Section 2(4-A) by Tamil Nadu Act 23 of 2012, with effect from 19.06.2012, to mean an assessment made or deemed to have been made under the Act and includes a re-assessment or a revision of assessment. Simultaneously, a proviso was inserted to Section 22(2) to the effect that in respect of returns for the years 2006-07 to 2010-11 where assessment orders had not been passed till the date of amendment being 19.06.2012, such orders would have been deemed to have been passed on 30.06.2012.

16. The Statement of Objects and Reasons to The Tamil Nadu Value Added Tax Act 2006 (Tamil Nadu Act 42 of 2006) read thus:

> ***10.2.4. Amendment to section 22(2) of TNVAT Act , 2006 for making provision for Deemed Assessment***
> *As per the existing provisions of sub-section (2) of section 22 of the TNVAT Act, 2006, the Assessing Authority shall accept returns submitted for the year by the dealer and if the returns are accompanied by the proof of payment of tax and the documents prescribed, the Assessing Authority is required to pass an assessment order. In line with the general 21 principles of Value Added Tax wherein it is envisaged that there will be no compulsory assessment at the end of each year, the Government decided to dispense with the existing procedure of passing an assessment order by the assessing authority and to replace it with a system of deemed assessment. The intention of the Government in this regard was announced while moving the demand for grants of the Commercial Taxes Department in August 2011. Accordingly, a draft Bill has been prepared in consultation with the Law Department and will be introduced in the ongoing session of the Assembly. This measure once implemented will go a long way in making the interface of the trading public with the Department more simple and transparent. At the same time in order to avoid misuse by potential tax evaders, the current system of detailed scrutiny of twenty percent of the cases selected at random by the Commissioner of Commercial Taxes*

regarding the correctness of the returns submitted by the dealers, will continue.

17. Section 22(2), both pre and post 2012 are extracted below:

Pre 2012:

22. Procedure to be followed by Assessing Authority.- *(1) The assessment in respect of the dealer shall be on the basis of return relating to his turnover submitted in the prescribed manner within the prescribed period.*

(2)The assessing authority shall accept the returns submitted for the year, by the dealer, if the returns are accompanied by the proof of payment of tax and the documents prescribed, and on such acceptance, the assessing authority shall pass an assessment order.

Post 2012:

22. Deemed assessment and procedure to be followed by the assessing authority.- *(1)The assessment in respect of the dealer shall be on the basis of return relating to his turnover submitted in the prescribed manner within the prescribed period.*

[(2) The assessing authority shall accept the returns submitted for the year, by the dealer, if the returns are in the prescribed form and accompanied with the prescribed documents and proof of payment of tax. Every such dealer shall be deemed to have been assessed for the year on the 31st day of October of the succeeding year:

Provided that in respect of such returns submitted for the years 2006-2007, 2007-2008, 2008- 2009, 2009-2010 and 2010-2011, on which assessment orders are not passed shall be deemed to have been assessed on the 30th day of June 2012.]

18. Prior to amendment in 2012, the section required the officer to pass an assessment order based on verification of the returns and annexures filed by an assessee. This procedure was hardly ever followed. Since there is no time limit

prescribed statutorily for best judgement assessment either, under section 22(4), there arose a situation where dealers were not being assessed for long years. The necessity for the deeming fiction thus arose on account of long pendency of assessment proceedings at the end of the Sales tax Department.

19. To be noted that under the amended provision there is no enquiry contemplated and the officer is required to pass an order merely accepting the returns filed by an assessee if the returns are in the prescribed form and accompanied by the prescribed documents and proof of payment of tax. If no such order had been passed, such an order would be deemed to have been passed as on the 31^{st} of October of the succeeding year.

20. Section 22(3) provides for selection of upto 20% of the total number of assessments by the Commissioner in the prescribed manner for the purpose of detailed scrutiny regarding the correctness of the returns submitted. Such selection is for conduct of revision of assessment, whereunder necessary, on a random basis, though in terms of the prescription in this regard. The provisions are more or less the same both pre and post 2012.

21.Section 22(4) provides for the framing of an assessment to the best of the officer's judgement. Prior to 2012, this provision could be invoked only if a dealer does not file returns but post 2012, it can be invoked in two situations:

firstly, if no return is submitted by the dealer or secondly, if the returns submitted are found to be incomplete, incorrect or unaccompanied by necessary documents or proof of payment of tax. The section specifically requires the officer to afford a hearing to the assessee prior to completion of proceedings under this section, both prior to, and post 2012. There is no limitation provided under this section.

22. Both provisions are extracted below:

Pre 2012:

22(4) If no return is submitted by the dealer for that year, the assessing authority shall, after making such enquiry as it may consider necessary, assessthe dealer to the best of its judgment, subject to such conditions as may beprescribed:

Provided that before taking action under this sub-section, the dealer shall be given a reasonable opportunity of being heard.

Post 2012:

22 (4) If no return is submitted by the dealer for any period of the year or if the return filed is in complete or incorrect, or if not accompanied with any of the documents prescribed or proof of payments of tax, the assessing authority shall, after making such enquiry as it may consider necessary, assess the dealer to the best of its judgment, subject to such conditions as may be prescribed, after the completion of that year:

Provided that before taking action under this sub-section, the dealer shall be given a reasonable opportunity of being heard.

23.Section 22(5) provides for levy of penalty in addition to assessment made under Section 22(4) either in the same order or by way of a separate order. The penalty is stipulated to be 150% of the difference of tax assessed and tax paid as per returns. The proviso states that no such penalty may be imposed after 6 years from the date of assessment order unless the dealer is given liberty of showing cause against such imposition.

24. Section 22(6)(a) entitles a dealer to apply to the Assessing Authority for re-assessment accompanied with a correct and complete return. The Assessing Authority is required to verify such application and return and if satisfied that the failure to submit return was due to reasons beyond the control of the applicant, cancel the assessment passed under Section 22(4) and make a fresh assessment on the basis of the return now submitted.

25. Even here, the application is to be accompanied by proof of payment of tax under the return now filed. Section 22(6)(b) provides for revision of tax, if paid in excess and Section 22(6)(c) for revision of penalty, if any imposed and collected under Section 22(5). In both instances, revision of tax and penalty, no interest is payable.

26. Section 24 provides for a special assessment of sales, where the Assessing Authority is satisfied that there has been under valuation of sales or purchases, leading to evasion of tax. Such under valuation must result on a comparison of the price adopted by that dealer with the prevailing market price of the same goods. An assessment under Section 24 may be made at any time within 6 years from the expiry of the year to which the tax relates.

27. Both provisions are extracted below:

Pre 2012:

24. Assessment of sales shown in accounts at low prices.-*(1) If the assessing authority is satisfied that a dealer has, with a view to evade the payment of tax, shown in his accounts, sales or purchases of any goods, at prices which are abnormally low compared to the prevailing market price of such goods, it may, at any time within a period of five years from the expiry of the year to which the tax relates, assess or re-assess the dealer to the best of its judgment on the turnover of such sales or purchases after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such assessment.*

(2) The provisions of sub-sections (3) to (8) of Section 27, shall, as far as may be, apply to assessment or re-assessment under sub-section (1) as they apply to the re-assessment of escaped turnover under sub-section (1) of Section 27.

Post 2012:

24. Assessment of sales shown in accounts at low prices.- *(1) If the assessing authority is satisfied that a dealer has, with a view to evade the payment of tax, shown in his accounts, sales or purchases of any goods, at prices which are abnormally low compared to the prevailing market price of such goods, it may, at any time within a period of [six years] from the expiry of the year to which the tax relates, assess or re-assess the dealer to the best of its judgement on the turnover of such sales or purchases after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such assessment.*

(2) The provisions of sub-sections (3) to (8) of section 27, shall, as far as may be, apply to assessment or re-assessment under sub-section (1) as they apply to the re-assessment of escaped turnover under sub-section (1) of section 27.

28. There is clarity in the limitation provided under Section 24, since it is

directly relatable to the assessment period. In my illustration, 2015-16, if an authority wishes to make a special assessment under Section 24, he has till 31st March, 2022 to frame such assessment. Section 24(2) states that the provisions of Section 27(3) to (8) shall apply to assessments or re-assessments under Section 24(1) equating Section 24(1) to Section 27(1). Section 25 sets out the procedure to be followed in assessments in certain stipulated situations and Section 26 deals with the assessment of legal representatives.

29. Section 27 deals with the assessment of escaped turnover and wrongful availment of input tax credit. Section 27(1)(a) deals with revision of assessment of the whole or any part of the turnover of business of a dealer and states that such revision may be made at any time within a period of 6 years from date of assessment. The phrase *'6 years from date of assessment'* substituted the phrase *'5 years from the date of assessment order by the assessing authority'*, with effect from 19.06.2012.

30. The main provision, both pre and post 2012 are set out below:

Pre 2012:

> ***27. Assessment of escaped turnover and wrong availment of input tax credit.-****(1)(a) Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of sub-section (3), at any time within a period of five years from the date of assessment order by the assessing authority, determine to the best of its judgment the turnover which has escaped assessment and assess the tax payable on such*

turnover after making such enquiry as it may consider necessary.

Post 2012:

27. Assessment of escaped turnover and wrong availment of input tax credit.- *(1) (a) Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of sub-section (3), at any time within a period of [six years from the date of assessment] determine to the best of its judgment the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary.*

31.Section 27(1)(b) is identically couched and provides for the same limitation except that it relates to revision of assessment for the reason that the turnover of a dealer has been assessed at a rate lower than the rate at which it was assessable. Both provisions are extracted below:

Pre 2012:

27(1)(b) Where, for any reason, the whole or any part of the turnover of business of a dealer has been assessed at a rate lower than the rate at which it is assessable, the assessing authority may, at any time within a period of five years from the date of order of assessment by the assessing authority, re- assess the tax due after making such enquiry as it may consider necessary.

Post 2012:

27(1)(b) Where, for any reason, the whole or any part of the turnover of business of a dealer has been assessed at a rate lower than the rate at which it is assessable, the assessing authority may, at any time within a period of [six years from the date of assessment], re-assess the tax due after making such enquiry as it may consider necessary.

32.Section 27(2) deals with the revision of assessment in a situation where the officer is of the opinion that input tax credit has been availed wrongly by a dealer or that the dealer has produced false bills, vouchers, declaration certificate or any other documents with a view to support the claim of input tax credit or revision. That Section also computes limitation from date of 'assessment' or date of 'order of assessment' being 5 years from the said date for making of an enquiry and reversal of input tax credit availed and determined, if the original claim was found unacceptable. Revision of assessment in all circumstances has to be made after affording the dealer a reasonable opportunity to show cause.

33. The provisions pre and post 2012 are extracted below:

Pre 2012:

27(2) Where, for any reason, the input tax credit has been availed wrongly or where any dealer produces false bills, vouchers, declaration certificate or any other documents with a view to support his claim of input tax credit or refund, the assessing authority shall at any time, within a period of five years from the date of order of assessment, reverse input tax credit availed and determine the tax due after making such an enquiry, as it may consider necessary:

Provided that no order shall be passed under sub-sections (1) and (2) without giving the dealer a reasonable opportunity to show cause against such order.

Post 2012:

27(2) Where, for any reason, the input tax credit has been *availed wrongly or where any dealer produces false bills, vouchers, declaration certificate or any other documents with a view to support his claim of input tax credit or refund, the assessing authority shall, at any time within a period of six years from the date of order of assessment, reverse input tax credit availed and determine the tax due after making such a enquiry, as it may consider necessary:*

Provided that no order shall be passed under sub-sections (1) and (2) without giving the dealer a reasonable opportunity to show cause against such order.

34. Section 27(3) and the clauses thereunder provide for levy of penalty. Sub-Section (5) states that power of revision of assessment may be exercised even though the original order of assessment, if any, passed in the matter, has been the subject matter of an appeal or revision. Sub-Section (6) states that in computing the period of limitation for assessment/re-assessment under Section 27, the time during which the proceedings for assessment or re-assessment remained stayed under orders of a Civil Court/competent authority, shall stand excluded.

35.Likewise, Section 27(7) excludes time during which an appeal/other proceeding in respect of any other assessment or re-assessment involving a question of law having a direct bearing on the assessment/re-assessment in question, was pending before the High or Supreme Courts and Section 27(8) excludes the time during which an appeal proceeding in respect of assessment or re-assessment of the same or part of the turnover made under any other enactment was pending before any appellate or revisional authority or the High/Supreme Courts.

36. This completes the scheme of the Act in relation to assessments/re-assessments. The issue that arises relates to the point of initiation of the 5/6 year period for effecting revision of assessments under Section 27 of the Act. The judgement in *Bhatinda District Co-ooperative Milk Producers Union* (supra) was rendered in the context of the exercise of power of suo motu revision under Section 21 of the Punjab General Sales Tax Act, 1948. No time limit had been set out for exercise of suo motu revision. However, in view of the provision for completion of assessment within three years in cases falling under sub-section 11(1) or 11(3) and within 5 years in cases falling under subsection 11(6), the Bench held that revisional jurisdiction should ordinarily be exercised within three years and, in no circumstance, beyond five years.

37. At paragraphs 18 and 19, the Bench states as follows:-

> *'18.It is trite that if no period of limitation has beenprescribed, statutory authority must exercise its jurisdictionwithin a reasonable period. What, however, shall be thereasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.*
> *19. Revisional jurisdiction, in our opinion, should ordinarily be exercised within a period of three years having regard to the purport in terms of the said Act. In any event, the same should not exceed the period of five years. The view of the High Court, thus, cannot be said to be unreasonable. Reasonable period, keeping in view the discussions made hereinbefore, must befound out from the statutory scheme. As indicated herein*

> *before, maximum period of limitation provided for in subsection (6) of Section 11 of the Act is five years.'*

38. The Allahabad High Court in *Mass Awash Private Limited* considered the question relating to limitation for completion of proceedings under Section 201(1)/201(1A) of the Income Tax Act, 1961. No period of limitation was prescribed under Section 201 for exercise of power thereunder and the argument of the assessee was that if no period was prescribed, then such power could be exercised only within reasonable time and not thereafter. Several decisions were cited in support of that proposition. In those decisions, the Court had held that limitation of four years should be taken as reasonable for exercise of power under Section 201(1) / 201 (1A).

39. That contention was rejected citing a judgment of three judges of the Hon'ble Supreme Court in *Uthaman Mambeo Mahale vs. Vithal Deo* (AIR 1997 SC2695 and of the Bombay and Calcutta High Courts to conclude that if the Court feels that the power has been exercised for valid and bonafide reasons, then, the time taken for exercise of such power should be considered reasonable. The test is thus to examine whether the power has been exercised by a competent authority, and for a reasonable period and for any period that was beyond reasonable, whether the delay was unjust, arbitrary or whimsical or whether it was for valid reasons.

40. In *Parisons foods*, a Division Bench of the Kerala High Court considered the question as to whether assessments under the Central Sales Tax (CST) Act should be completed under the extended time provided under the Kerala High Court General Sales Tax Act and Rules. The Bench noted the argument of the assessee that no specific time limit had been prescribed under Section 6(4) of the CST Rules and thus, such issue would have to be completed within a reasonable time. Since the maximum period for reassessment under the CST Act as stipulated under Rule 6(7) or 6(8) of the Rules was four years, the original assessment should have been completed within such period of four years as well.

41. The above argument had been rejected by the learned Single Judge, who was of the view as no time factor could be read into Rule 6(5). In that connection, the learned Judge had noted that Section 17 of the Kerala General Sales Tax Act had extended the time for completion of assessment upto 31.03.2010 and hence the notice issued for original assessment was within the aforesaid time. On this factual and legal position, the appeal of that assessee had been rejected. In rejecting the same, the Division Bench referred to the judgment in *Bhatinda District Co-operative Milk Producers Union* framing the legal issue to be decided by the Bench as to 'what is reasonable time' for issuing a pre assessment notice.

42. The issue before this Court is distinguishable from that addressed by the Courts in the matters discussed in the preceding paragraphs, cited by the respondents. The issue now specifically relates to what would constitute the point of initiation for re-assessments/revision of assessments under the TNVAT 2006. No doubt, in considering this question, this Court will have to touch upon the periods available under statute to enable the framing of regular assessments. However, that is not the exact issue before the Court now. The decisions cited by the revenue concern the issue of whether a limitation can be implied and read into the enactment, where no such limitation is actually provided in the Statute.

43. An assessment under the sales tax laws relates to the period commencing from the 1st of April of a particular year till 31st of March of the next year. The usage of the phrase '*after completion of that year'* in Section 22(4) means that an assessment under that Section shall be completed only after the 31st of March of the assessment period. Any such assessment, if framed after 31.10.2016 would supersede the assessment deemed to have been made under Section 22(2) on or before 31.10.2016. This is for the reason that an assessment under Section 22(4) is one framed after enquiry in line with the principles of natural justice.

44. Such an assessment would have to be preferred to a deemed assessment passed under Section 22(2) deeming the returns and annexures to

be in order. Likewise, even in the event a speaking order has been accepting the returns under Section 22(2), the officer may invoke section 22(4). Under Section 22(2) where the officer intends to accept the returns and annexures filed, there is no necessity for opportunity to have been afforded to the assessee and hence there is no statutory stipulation in that regard. The argument is that 31.10.2016 should be construed as the limitation for passing of an order under Section 22(4). This argument cannot be accepted for the reason that the schemes of assessment under Sections 22(2) and 22(4) are different and distinct.

45. The former is an assessment based upon and accepting the returns and annexures filed by an assessee and is also deemed to have been passed if no written order under Section 22(2) is passed by the 31st of October 2016. The power of best judgement assessment kicks in if the officer finds *that the return is incomplete or incorrect, unaccompanied by the prescribed documents or proof of payment of tax*. In such an event, the officer is to issue notice to the assessee, enter into detailed verification of the returns and annexures, hear the assessee and pass an order of assessment under Section 22(4) of the Act.

46. This then is the regular assessment which is framed after thorough scrutiny of returns and hearing the assessee. This exercise will be undertaken in the returns selected on random basis under Section 22(3) as well as any others

where the officer feels the returns and annexures are *incomplete or incorrect, unaccompanied by the prescribed documents or proof of payment of tax.* The use of the phrase '*incomplete or incorrect*' indicate a degree of application of mind higher and greater than that exercised by the authority under Section 22(2) of the Act.

47. This follows from the phrase '*incomplete or incorrect*' in addition to the verification of the prescription relating to documents to accompany the return or proof of payment of tax. Thus, there is a material escalation in the contents of an order contemplated under Section 22(4) when compared with an order under Section 22(2) of the Act. This power to assess under Section 22(4) under scrutiny is wider than the power under Section 22(2) and does not, in my considered view, lapse upon expiry of the period set out for an assessment under Section 22(2) as the degree of scrutiny, the coverage of issues and consequently, the exercise contemplated are different statutorily.

48. Thus, at the first instance, an order of deemed assessment under Section 22(2) can be a point of initiation for revision of assessment under Section 27 of the Act. If a written, speaking order is passed under Section 22(2), such order of assessment under Section 22(2) can also be a point of initiation for revision of assessment under Section 27 of the Act. If no return is submitted by the dealer for any period of the year or if the return filed is in complete or

incorrect, or if not accompanied with any of the documents prescribed or proof of payments of tax, the assessing authority shall, after making such enquiry as it may consider necessary, assess the dealer to the best of his judgment, after hearing the dealer. Such an order u/s 22(4) shall be passed after the end of the year in question. This shall also constitute a valid point of initiation for initiation of revision under Section 27 of the Act.

49. Such order under Section 22(4) can be passed at any time for a period of six years which is the time already provided for passing of an order of revision of assessment under Section 27 of the Act. The periods of limitation for passing of an order under Sections 22(4) and 27, thus, in my view, co-exist and no order under Section 22(4) can be passed beyond the period of limitation as set out for initiation of proceedings under Section 27 of the Act. Needless to say, this emanates from a comprehensive reading of the statutory provisions at play.

50. Under Section 27, the authority may, at any time within a period of six years from the date of assessment, determine to the best of his judgment, turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as he may consider necessary. The reference to ‘assessment’ in section 27 includes a re-assessment, and can, in my considered view, connote either (i) a speaking, written order of assessment

under Section 22(2) (ii) a deemed order of assessment under Section 22(2) (iii) a best judgement assessment under Section 22(4) or (iv) a revision under Section 27 of the Act in respect of subjects different from those dealt with in previous reassessments.

51. These writ petitions are disposed in terms of this order. Let consequential orders be passed in the case of all Writ Petitioners in this batch based on the conclusions in this order. Seeing as the legal issue has been raised by all the petitioners relates to assumption of jurisdiction, penalties, if any, levied under the impugned orders stand cancelled. Connected miscellaneous petitions are closed with no order as to costs.

27.06.2023

Ska/sl
Index : Yes/No
Speaking Order/Non-speaking Order
Neutral Citation: Yes/No

To

The Assistant Commissioner (St)
Tambaram Assessment Circle,
No 19- A Siva Shanmugam Salai,
Tambaram, Chennai-45

DR.ANITA SUMANTH,J.

Ska/sl

WP.No.28896 of 2019, 2735 of 2022, 17928, 19920, 19918, 19923, 19925, 19930, 19933, 19921, 19924, 19926, 19928, 19932, 22122, 24645, 24647, 24684 of 2021 & 4418 of 2020
WMP.No.28639 of 2019, 2898 of 2022, 19136, 21168, 21165, 21172, 21177, 21179, 21183, 21170, 21173, 21176, 21178, 21181, 23345, 25930, 25932 & 25979 of 2021 and 5224 of 2020

27.06.2023