BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.03.2023**

CORAM

THE HONOURABLE Ms.JUSTICE **P.T.ASHA**

W.P.(MD) No.26960 of 2022
and
W.M.P.(MD) 21123 of 2022

Tvl.Standard Electric Company,
represented by its Partner,
S.Sundararaj, aged about 64 years,
S/o. S.Singaravel
No.45-C-D, Palayampallam Bulk,
Thoothukudi 628 008. ... Petitioner

/vs./

1.The Commissioner of Commercial Taxes,
O/o. the Principal and Special Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai 600 005.

2.The Assistant Commissioner (ST)(FAC),
Tuticorin -3 Assessment Circle,
Commercial Taxes Buildings,
No.282-A, Beach Road,
Thoothukudi 628 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the impugned proceedings of the 2nd Respondent in TIN:33565840008/2010-11 dated 27.04.2021 (TIN wrongly mentioned in the Impugned Order as 3356584008) and quash the same.

For Petitioner : Mr.B.Rooban

For Respondents : Mr.A.Sivanupandian
Government Advocate

ORDER

The petitioner has approached this Court for issue of Writ of Certiorari to quash the proceedings of the second respondent in TIN.33565840008/2010-11 dated 27.04.2021 on the ground that the said proceeding is clearly barred by limitation, as it is beyond the period of 6 years.

2.The facts in brief are as follows:-

3.It is the case of the petitioner that they are a partnership concern dealing in the sale of electric home appliances. The concern is registered with the second respondent in TIN.33565840008. During the assessment year 2010-2011

(TNVAT), the petitioner had reported their total taxable turnover through returns and the original assessment for the subject assessment year 2010-2011 is deemed to have been passed on 30.06.2012, as per the provisions of Section 22(2) of the TNVAT Act. However, to the shock and surprise of the petitioner, they have received the impugned order dated 27.04.2021 in TIN.3365840008/2010-11 nearly 9 years after the date of the original assessment by reversing the input tax credit on the alleged purchases from the registration cancelled dealer. In the impugned order, there is reference to a notice dated 09.02.2021, which has not been received by the petitioner.

4.The petitioner would submit that the period for revising the assessment under Section 27 of the Act was 6 years, which lapsed on 30.06.2018. The alleged notice dated 09.02.2021 is also beyond this period and therefore, they would submit that the entire proceedings are barred by limitation.

5.The second respondent had submitted a counter affidavit, in which they would submit that a pre-revision notice dated 02.07.2015 was issued to the petitioner, who did not respond to the same. Thereafter, when the demand order was made, the petitioner had produced a copy of the letter dated 16.07.2015 responding to the pre-revision notice dated 02.07.2015. The petitioner, in this reply, have themselves declared receipt of the pre-revision notice. A copy of this letter was received in the office of the respondents on 03.09.2021. Therefore, it is the contention of the respondents that the pre-revision notice dated 02.07.2015 was submitted well within the period of 6 years from the original assessment, which is deemed to have been passed on 30.06.2012. The notice affording a personal hearing to explain the contention was served through post on 09.02.2021, pursuant to which revised order has been passed on 27.04.2021. They would therefore submit that the demand was not barred by limitation.

6.Heard the learned counsels on either side and perused the records.

7.The letter dated 16.07.2015, which has now been produced as having been received on 03.09.2021 is denied by the petitioner and there is no proof to show that the date on which the response has been made to the pre-revision notice dated 02.07.2015 by the petitioner, since there is no proof to show when the pre-revision notice dated 02.07.2015 has been served on the petitioner.

8.Therefore, considering the fact that the assessment has been deemed to have been made on 30.06.2012, proceedings ought to have been initiated on or before 30.06.2018. In the instant case, the impugned order has been passed only on 27.02.2021 and the reassessment notice referred to is dated 09.02.2021, which is beyond the period prescribed under Section 27 of the TNVAT Act. Therefore, this Court feels that the impugned order of assessment cannot be sustained and is liable to be set aside. Hence, the Writ Petition is allowed and the impugned notification is quashed, as it is beyond the period of limitation. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

20.03.2023

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

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To

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P.T.ASHA, J.

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