IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF DECEMBER, 2024

PRESENT

THE HON'BLE MR JUSTICE V KAMESWAR RAO

AND

THE HON'BLE MR JUSTICE S RACHAIAH

WRIT APPEAL NO. 3965 OF 2019 (T-RES)

BETWEEN:

M/S. ALLIANCE INFRASTRUCTURE
PROJECTS (P) LTD.,
REPRESENTED BY ITS DIRECTOR,
SRI. SUNEEL BOMMIREDDY,
AGED ABOUT 47 YEARS,
NO.85, KARTHIK NAGAR,
MARATHAHALLI, K.R.PURAM,
OUTER RING ROAD, BENGALURU-560 037.

…APPELLANT

(BY SRI. SURENDRAN THUMBOOCHETTY, ADVOCATE)

AND:

1. THE COMMERCIAL TAX OFFICER,
(AUDIT)-4.5, VTK-2, "A" BLOCK,
1ST FLOOR, BESIDES NATIONAL
GAMES VILLAGE, KORAMGNALA,
BENGALURU-560 047.

2. THE COMMISSIONER OF
COMMERCIAL TAXES IN KARNATAKA,
VANIJYA THERIGE KARYALAYA,
1ST MAIN, GANDHINAGAR,
BENGALURU-560 009.

…RESPONDENTS

(BY SRI. ADITYA VIKRAM BHAT, AGA FOR R1 & R2)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE JUDGEMENT AND ORDER DATED 17/10/2019 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HON'BLE COURT IN WP NO.30531/2018 AND AS A CONSEQUENCE, ALLOW THE WRIT PETITION FILED BY THE APPELLANT.

THIS APPEAL COMING ON FOR FINAL HEARING THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE V KAMESWAR RAO
AND
HON'BLE MR JUSTICE S RACHAIAH

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE V KAMESWAR RAO)

This intra-court appeal has been filed by the appellant challenging the order of the learned Single Judge in Writ Petition No.30531/2018, whereby the learned Judge has dismissed the petition by stating in Paragraphs No.10, 11, 12 as under: -

> *"10. Section 64(2) of the Act is quoted hereunder for ready reference:-*
>
> *"The Commissioner may on his own motion call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by any officer subordinate to him [or the Authority for*

Clarification and Advance Rulings constituted under Section 60] is erroneous in so far as it is prejudicial to the interest of the revenue, he may if necessary, stay the operation of such order for such order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or canceling the assessment or directing a fresh assessment."

11. In terms of the said provisions, the Commissioner is empowered to pass such order as the circumstances of the case justify, including an order enhancing or modifying the assessment, or canceling A the assessment or directing a fresh assessment. A direction issued by the Commissioner to do the fresh assessment would not come within the purview of subsection [3] of Section 40 of the Act. The period of limitation would start running from the date of passing of the order by the Commissioner under Section 64(2) of the Act directing the fresh assessment. If that to be considered in terms of sub-section [1] of

Section 40 of the Act, the order impugned is well within the time prescribed.

12. Hence, the arguments advanced by the learned counsel for the petitioner fails and the writ petition is dismissed with liberty to the petitioner to avail the alternative remedy of appeal available under the Act. If such an appeal is preferred within a period of two weeks from the date of receipt of certified copy of the order, the same shall be considered by the Appellate Authority in accordance with law on merits without objecting to the aspect of limitation."

2. The writ petition was filed by the appellant assailing the order of re-assessment passed by Respondent No.1 [The Commercial Tax Officer (Audit)] under Section 39(1) of the Karnataka Value Added Tax Act, 2003 ('Act of 2003' in short) and the consequential notice of demand both dated 30.05.2018 primarily on the ground that the re-assessment order impugned is barred by limitation.

3. Some of the facts which are required to be noted are that the appellant is a Private Limited Company and was registered under the Act of 2003. The appellant is engaged in the execution of works contract of construction of residential/commercial building for sale.

4. The Deputy Commissioner of Commercial Tax ('Assessing Authority' in short) had passed an order of re-assessment dated 16.01.2010 under Section 39(1) of the Act relating to the tax periods from April 2007 to September 2007 levying tax on certain receipts.

5. The appellant being aggrieved by the order, had preferred an appeal before the First Appellate Authority under Section 62 of the Act of 2003. The appeal came to be allowed vide order dated 31.05.2010. Pursuant to the said order, the Additional Commissioner of Commercial Taxes ('Revisional Authority' in short) exercising power under Section 64(1) of Act of 2003,

initiated suo-moto revisional proceedings and dropped the same in terms of the order dated 13.06.2012.

6. Subsequently, the Respondent No.2 (the Commissioner of Commercial Taxes) initiated the proceedings under Section 64(2) of the Act of 2003 and passed an order dated 17.07.2014 setting aside the orders of the Appellate Authority as well as the Revisional Authority, under Section 64(1) of the Act of 2003 and remanded the case to the Assessing Authority for re-verifying the taxable contract receipts for the period of April and May of 2007 and re-do the assessment denovo in the light of the observations made in Suo-moto Remand Order and as per law. It is consequent to the remand made to the Assessing Authority that the impugned re-assessment order and notice of demand dated 30.05.2018 were issued.

7. The case of the appellant before the learned Single Judge was that, sub-section (1) of Section 40 of the Act of 2003 contemplates that an assessment under

Section 38 or re-assessment under Section 39, for an amount of tax due for any prescribed tax period, shall not be made after five years, after the end of the prescribed tax period. It was the case that, in terms of sub-section (3) in computing the period of limitation specified for assessment or re-assessment, as the case may be under the Act, the period taken for disposal of any appeal against an assessment or other proceedings by the Appellate Authority, a Tribunal, a Competent Authority or any revisional proceedings by the Joint Commissioner or the Additional Commissioner or the Commissioner shall not be taken into account in computing such period for assessment or re-assessment, as the case may be. Thus the order of re-assessment dated 30.05.2018, if examined in the light of the aforesaid provisions, the order is barred by limitation.

8. On the other hand, the case of the respondents was that the impugned orders dated 30.05.2018 were passed in compliance with the order of

the Commissioner dated 17.07.2014 is well within time under Section 40(1) of the Act of 2003.

9. We have already re-produced the conclusion drawn by the learned Single Judge in the impugned order.

10. The submission of the learned counsel for the appellant before us is that, Section 40 of the Act of 2003 provided for a period of limitation for passing an order of assessment or re-assessment. Specifically, the second proviso appended to Section 40(1) of the Act of 2003 provided for the period of limitation for tax periods including the periods- April, 2007 to September 2007.

11. The said proviso being relevant to the case of the appellant is extracted hereunder:-

> *"Provided further that an assessment or reassessment relating to any tax period commencing from the 1st day of April, 2007 upto the period ending 31st day of March, 2012 shall be made within a period of seven years after the end of the prescribed tax period".*

12. Admittedly, the order of re-assessment dated 30.05.2018 has been passed with reference to the tax period of May 2007 necessarily has to be made within a period of 07 years after the end of the prescribed tax period. In other words it is his submission that, since the order of the tax period is May 2007, the re-assessment ought to have been made on or before 30.04.2014.

13. The learned counsel states that, certain amendments were effected to Section 40 of the Act of 2003 in the year 2017 and the sub-section (3) of Section 40 stood amended with retrospective effect from 01.04.2005. The section relevant for the purpose of issue is re-produced as under:

> *"(3) In computing the period of limitation specified for assessment or re-assessment, as the case may be under this Act,* ***the period taken for disposal*** *of any appeal against an assessment or other proceeding by the appellate authority, a tribunal or competent court or any revisional*

> *proceeding by the Joint Commissioner or the Additional Commissioner or the Commissioner **shall not be taken in to account in computing such period for assessment or reassessment as the case may be"***

14. Hence, it is his submission that, from the language employed in sub-section of Section 40 of the Act of 2003, it is crystal clear that,-

> Firstly, in the event of pendency of appeal against an assessment or other proceedings before an Appellate Authority, the Tribunal or Competent Court, the period taken for disposal of such an appeal ought to be deducted while computing the period of limitation for assessment or re-assessment, as the case may be.
>
> Secondly, the period taken for disposal of any revisional proceedings by the Joint Commissioner, Assistant Commissioner or Commissioner shall not be taken into account in computing the period of limitation.

15. The learned counsel states that, going by the language employed in Section 40(3) of the Act of 2003 which is amended with retrospective effect from 01.04.2005, the period of limitation *vis-à-vis* the order of re-assessment dated 30.05.2018 in the case of the appellant has to be calculated as under:-

Sl.No.	PROCEEDINGS	PERIOD
1.	Appeal in VAT.Ap.1826 to 1830/2009-10	80 days
2.	Before the Additional Commissioner in SMR/VAT/APP-2/CR-02/2012-13	41 days
3.	Before the Commissioner of Commercial Taxes in KVAT/RVN/CR-15/2013-14	150 days
4.	Appeal in VAT.Ap.16/2017-18	120 days
		391

16. He states, even excluding 391 days taken for the disposal of the appeal, Revisional Proceedings by the Additional Commissioner and the Commissioner, still the impugned order of re-assessment dated 30.05.2018 has been passed well-beyond the prescribed period of limitation. He states that, the conclusion drawn by the

learned Single Judge in paragraphs - 11 & 12 that the limitation would start running from the date of passing of the order by the Commissioner under Section 64(2) of the Act directing fresh assessment, is clearly erroneous over-looking the aforesaid position.

17. The learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Jaipuria Brothers Limited Vs. The State of Uttar Pradesh and others [1969 Sales Tax Cases (XVI) Pg. 494],*** in support of his submissions. He presses for the prayers as made in the appeal.

18. On the other hand, Mr. Aditya Vikram Bhat, learned counsel appearing for the respondents do not really contest the factual scenario highlighted by the learned counsel for the appellant. In fact, he do concede that the judgment of the Hon'ble Supreme Court in the case of ***Jaipuria Brothers Limited*** (supra) has not been over-ruled/varied in any subsequent Judgment(s).

In fact, he has also referred to a judgment of the Punjab and Haryana High Court in the case of ***Assessing Authority, Amritsar and Another Vs. Shri. Om Prakash Seth [1969 Sales Tax Cases (Vol.XXIV) Pg. 282]***, wherein the decision of ***Jaipuri Brothers Limited*** was followed.

19. Having heard the learned counsel for the parties, the short issue which arises for consideration is, *whether the learned Single Judge is justified to hold that the limitation for the purpose of re-assessment would start running from the date of passing of the order by the Commissioner under Section 64(2) of the Act of 2003*.

20. There is no dispute that, we are concerned with the tax period between April 2007 to September 2007, and the Assessing Authority has passed an order of re-assessment on 16.01.2010. The Appellate Authority exercising jurisdiction under Section 62 of the Act, had allowed the first appeal filed by the appellant vide order dated 31.05.2010. Pursuant thereto, even the Revisional

Authority had by initiating the suo-moto revision, has dropped the proceedings on 13.06.2012. It is only on 17.07.2014 the Commissioner of Commercial Taxes had initiated the proceedings under Section 64(2) of the Act and set aside the order of the Appellate Authority and the Revisional Authority, and remanded the matter to the Assessing Officer for re-verifying the taxable contract receipts for the period of April and May of 2007 and to do the re-assessment.

21. Learned counsel for the appellant had relied upon the proviso to Section 40, which says that the assessment or re-assessment relating to any tax period commencing from 1st day of April 2007 upto the period of date, the 31st March 2012 shall be made within a period of 07 years, after the end of the prescribed tax period, which means, the 07 years shall start running from 01.06.2007 and shall come to an end on 31.05.2014. It is also noted that, Section 40, which was amended in the year 2017 with retrospective effect

from 01.04.2005, contemplates that in computing the period of limitation specified for the assessment or re-assessment, as the case may be, the period taken for disposal of any appeal against an assessment or other proceedings by the Appellate Authority, a Tribunal or Competent Court or any Revisional Proceedings by Joint Commissioner or the Additional Commissioner or the Commissioner shall not be taken into account.

22. It follows that the period taken for disposal by different authorities like Appellate Authority/Revisional Authority/Commissioner of Commercial Taxes in the manner depicted by the appellant, which we have re-produced above, need to be excluded. In other words, as stated above, if 07 years of limitation for assessment or re-assessment need to be computed, the same shall expire on 31.05.2014, but, if 391 days are added to the same, then the period will come to an end just five days before 30.06.2015. So in other words, the re-assessment cannot be carried out after 26.06.2015.

23. In the present case, the re-assessment was done only on 30.05.2018, much after 26.06.2015. Hence, in that sense, the bar under proviso to Section 40 of the Act of 2003 shall come into play.

24. We agree with the submission of the learned counsel for the appellant that the learned Single Judge has not considered the above provisions, which we have highlighted while considering the issue. In fact, the order is also erroneous when the learned Single Judge says that the limitation would start running from the date of passing of the order of the Commissioner under Section 64(2) of the Act directing fresh assessment being contrary to the above provisions. In other words the conclusion of the learned Single Judge is without excluding the period during which the proceedings were pending before the Appellate Authority/Revisional Authority/Commissioner of Commercial Taxes.

25. The learned counsel for the appellant is also justified in relying upon the judgment of the Hon'ble

Supreme Court in the case of ***Jaipuria Brothers Limited*** (supra). In the said case the facts were, on March 20, 1952, the Sales Tax Officer, Kanpur, issued a notice under Section 21 of the Uttar Pradesh Sales Tax Act 1948, calling upon the appellant/Company to file a return of its turn over for the Assessment Year 1948-49 on the ground that the turn over had escaped assessment. On March 31, 1952, the Sales Tax Officer has made a best judgment assessment and determined the taxable turn over of the appellant/Company at Rs.50/- for the year 1948-49 and determined the appropriate tax liability. In appeal to the Judge (Appeals) Sales Tax, the order passed by the Sales Tax Officer was set aside by holding that the appellant/company was not a dealer within the meaning of Section 2(c) of the Act. But, the order of the Appellate Authority was set aside by the Judge (Revisions), Sales Tax, by order dated March 28, 1955 and the case was remanded to the Sales Tax Officer for fresh assessment. In the view of the Judge (Revisions), it was necessary to determine the ownership of the goods at the time of sales. The Sales Tax Officer then issued a notice calling upon the appellant/company to produce its Books of Account and other relevant documents for the purpose of assessment for the year 1948-49.

26. The appellant/Company contended that, as the original Assessment Order under Section 21 has been set aside by the Judge (Revisions), no proceeding in connection with the assessment was pending and re-assessment was barred because more than 03 years had elapsed since the end of the year of the assessment. The Sales Tax Officer rejected the contention of the appellant/Company and insisted that the Books of Account and other documents be produced as directed earlier. The appellant/Company then approached the High Court at Allahabad in a writ petition seeking a restraint order against the Sales Tax Officer, Kanpur from proceeding with the assessment of the appellant/Company for the Assessment Year 1948-49.

The Court held that the assessment sought to be made by the Sales Tax Officer pursuant to the order of the Judge (Revisions) was clearly barred by law of limitation prescribed in that behalf by Section 21 of the Uttar Pradesh Sales Tax Act. It was the view of the judge, it is immaterial whether the assessment was being made by the Sales Tax Officer suo-moto or under the direction of a superior authority, if at the time of making the re-assessment, the prescribed period by Section 21 had expired. The judgment of the learned Single Judge was reversed in an appeal by the Division Bench of the High Court. The Division Bench held that the Sales Tax Officer was competent in view of the order of remand, which directed fresh assessment proceedings against the appellant/Company. In commencing and continuing those proceedings, he was acting in compliance with the directions given under Sections- 9 & 10 of the Act, which he was bound to carry-out and to such assessment proceedings, the period of limitation prescribed by Section 21 of the Act did not apply. The Hon'ble

Supreme Court while reversing the view of the Division Bench, has held that the High Court was in error in limiting the operation of Section 21. That Section imposes restriction upon the power of the Sales Tax Officer. The officer is competent within three years next succeeding the date to which the tax relates to assess tax payable on the turn over, which has escaped assessment. But, the Section 21 does not provide expressly, nor is there any implication that the period within which the re-assessment may be made applies to those cases where the Sales Tax Officer acts on his own initiative and not pursuant to the directions of the Appellate or Revisional Authority. The Hon'ble Supreme Court relied upon the judgment of the Privy Council in ***Commissioner of Income-tax, Bombay Presidency and Aden V. Kemchand, Ramdas (a Firm)*** in support of its conclusion. In ***Kemchand's*** case, the Privy Council held that, as the Income Tax Officer had made the order imposing super tax on the assessee more than 01 year after the earlier demand in respect of income tax, the order was without jurisdiction. It is necessary to state here that during the pendency of the proceedings, Section 21 was extensively amended and the Hon'ble Supreme Court noting the amendments subject to no restrictions as to the period within which the order of assessment could be made, had confirmed the order of the High Court. But, in any case, in view of the position of law laid down by the Hon'ble Supreme Court, which is applicable to the facts of this case, it must be held that the Assessing Officer in the present case could not have held the assessment proceedings beyond the expiry of seven years after excluding the period during which the proceedings were pending before the Appellate Authority/Revisional Authority/Commissioner.

27. In the judgment reported, as the ***Assessing Authority, Amritsar and another (supra)*** the Full Bench of Punjab and Haryana High Court was considering the reference made to it on the question *whether the jurisdiction of the Commissioner under Section 21(1) of*

the Punjab General Sales Tax Act, 1948 is subject to period of limitation prescribed under Section 11(A) of the Act. In the said case also, the Commissioner while disposing of the revision under Section 21 of the Act had set aside the Order of Assessment and ordered the Assessing Authority to make a fresh assessment in accordance with law. The court held the proceedings are governed by the period of limitation prescribed in sub-sections (4), (5) and (6) of Section 11 or Section 11(A) of the Punjab General Sales Tax Act, 1948. The learned Single Judge had taken a view that the proceedings taken for fresh assessment by the Assessing Authority in pursuance of the order of remand made by the Commissioner in exercise of revisional powers is governed by the period of limitation provided in sub-sections (4), (5) and (6) of Section 11 or Section 11(A) of the Act.

28. The Court held that, the view is well-founded based on the judgment of the Hon'ble Supreme Court in

Jaipuria Brothers Limited. It was also held that once the Commissioner while exercising revisional powers decided to direct the Assessing Authority to make a re-assessment in accordance with law, the proceedings for re-assessment were fresh proceedings which were governed by the period of limitation prescribed under Section 11(A) of the Act and accordingly, the appeal was dismissed.

29. In view of the position of law, the re-assessment done by the Assessing Officer leading to impugned orders dated 30.05.2018 is without jurisdiction and accordingly the impugned order of the learned Single Judge dated 17.01.2019 in Writ Petition No.30531/2018 (T-RES) is set aside, and consequently, the orders dated 30.05.2018 of the Assessing Authority and the demand made thereof, are also set aside.

30. The writ appeal is **allowed.** No costs.

Sd/-
(V KAMESWAR RAO)
JUDGE

Sd/-
(S RACHAIAH)
JUDGE

KGR
List No.: 1 Sl No.: 28