IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 24.08.2023	Pronounced on: 05.02.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.513, 516 & 518 of 2022
and
W.M.P.Nos.547, 548, 549, 550, 552 & 553 of 2022

M/s.Ahad Hosiery (Pvt) Ltd.,
Represented by its Managing Director,
Mr.B.Mohamed Salman,
Shed.No.69, Tekic Tea Nagar,
Mudalipalayam, SIDCO,
Tirupur – 641 606. ... Petitioner in all W.Ps.

Vs.

The Assistant Commissioner (ST),
Rural – I Assessment Circle,
Tirupur. ... Respondent in all W.Ps.

Prayer in W.P.No.513 of 2022: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the impugned proceedings of the respondent in TIN: 33792394005/2011-2012 dated 24.12.2020 and the subsequent impugned notice issued in TIN : 33792394005/2011-2012 dated 20.12.2021 and quash both the proceedings as barred by limitation and also passed contrary to the provisions of the TNVAT Act, 2006.

Prayer in W.P.No.516 of 2022: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the impugned proceedings of the respondent in TIN: 33792394005/2012-2013 dated 24.12.2020 and the subsequent impugned notice issued in TIN : 33792394005/2012-2013 dated 20.12.2021 and quash both the proceedings as barred by limitation and also passed contrary to the provisions of the TNVAT Act, 2006.

Prayer in W.P.No.518 of 2022: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the impugned proceedings of the respondent in TIN: 33792394005/2013-2014 dated 24.12.2020 and the subsequent impugned notice TIN : 33792394005/2013-2014 dated 20.12.2021 and quash both the proceedings as barred by limitation and also passed contrary to the provisions of the TNVAT Act, 2006.

For Petitioner (in all W.Ps.)	:	Mr. Mr.P.Rajkumar
For Respondents (in all W.Ps.)	:	Mr.C.Harsharaj Additional Government Pleader

COMMON ORDER

In these three Writ Petitions, the petitioner has challenged the impugned assessment orders purportedly passed under Section 22(4) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as TNVAT Act, 2006) and the impugned notices dated 20.12.2021, calling upon the petitioner to pay the amount confined vide order dated 24.12.2020 for rectification of the aforesaid order under Section 84 of the TNVAT Act, 2006.

2.The issues involved in these Writ Petitions are similar in nature and hence, they are disposed of by this common order.

3.The dispute in these Writ Petitions are confined to the assessment years 2011-2012, 2012-2013 and 2013-2014. The petitioner had filed regular monthly returns for these assessment years under Section 21 of the TNVAT Act, 2006 read with Rule 7 of the TNVAT Rules, 2007.

4.It is the specific case of the petitioner that the assessments were deemed to have been completed in terms of Section 22(2) of the TNVAT Act, 2006 as amended vide Act No.23 of 2012 with effect from 19.06.2012. It is therefore, the case of the petitioner that the impugned notices issued seeking to revise the assessment on 04.11.2020 for the respective assessment years were time-barred.

5. It is submitted that in response to revision notices issued to the petitioner on 04.11.2020 for these assessment years, the petitioner had also replied on 30.11.2020, which was also duly acknowledged by the respondents. However, without considering the same, the respondents have passed the impugned assessment orders all dated 24.12.2020, for these assessment years as if the petitioner's reply dated 30.11.2020 were not on the file of the respondents for these assessment years.

6.It is therefore submitted that on this account, the impugned assessment orders dated 24.12.2020 for the assessment years 2011-2012, 2012-2013 and 2013-2014 were liable to be quashed for violating the principles of natural justice.

7.That apart, it is submitted that the petitioner's applications dated 18.02.2021 for rectification of these assessment orders dated 24.12.2020 have been rejected vide impugned notice dated 20.12.2021 ongoing the factual position. Importantly, it is submitted that the petitioner had taken a *bonafide* stand in the monthly returns filed under Section 21 of the TNVAT Act, 2006 read with Rule 7 of the TNVAT Rules, 2007, that the imported knitted fabric imported by the petitioner were exempted in terms of Entry 10 of Part-A of IV Schedule to the TNVAT Act, 2006.

8.It is admitted that the petitioner earlier had suffered an adverse order dated 24.12.2014 in the hands of the Advance Ruling Authority under Section 48-A of the TNVAT Act, 2006. It is therefore submitted that it cannot be said that monthly returns that were filed were either incorrectly or were incomplete and therefore, the invocation of machinery to revise the assessment under the provisions of TNVAT Act, 2006 were within the limitation.

9. The learned counsel for the petitioner would submit that all the monthly returns were filed by the petitioner by the due date and therefore it was open for the Assessing Officer to either assess the petitioner

provisionally in terms of Section 25(1) of the TNVAT Act, 2006 or after the completion of the assessment year. Instead, the machinery under Section 27 of the TNVAT Act, 2006 was wrongly invoked on 04.11.2020.

10. It is further submitted that all the notices dated 04.11.2020 referred to a notice dated 27.09.2018, copy of which was never received by the petitioner. It also refers VSI-3 Proposal-37/2015-16 dated 29.06.2015, which is a communication exchanged between the Enforcement Wing of the Commercial Tax Department and Office of the respondent, copy of which was not furnished to the petitioner.

11.That apart it is submitted that although the ruling of the Advance Ruling Authority under Section 48-A of the TNVAT Act, 2006 dated 24.12.2014, has been given against the petitioner in so far as availability of the benefit of Entry 10 of Part-A of IV Schedule of TNVAT Act, 2006 and that petitioner was liable to pay tax on imported textile fabric in terms of Entry 11 of the II Schedule to TNVAT Act, 2006, it would not mean that the monthly returns filed by the petitioner in terms of the provisions of the TNVAT Act, 2006 r/w TNVAT Rules, 2007 were either incomplete or incorrect.

12.It is submitted that the assessment was deemed to have been completed on 30.10.2012, 31.10.2013 and 31.10.2014 for these assessment years in view of Section 22(2) of the TNVAT Act, 2006 and therefore, the limitation for issuing a notice to revise the deemed assessment that was completed under Section 22(2) of the TNVAT Act, 2006 expired on 31.10.2018, 31.10.2019 and on 31.10.2020. Therefore, the learned counsel for the petitioner submits that the impugned order has to go.

13. On behalf of the petitioner, learned counsel for the petitioner has placed reliance on the following cases:-

i. ***Tv.Pupa Lineraa*** *vs.* ***The State Tax Officer****, W.P.(MD)No.14494 of 2021;*
ii. ***M/s.Nyle Garments*** *vs.* ***The Assistant Commissioner (ST)****, W.P.No.9891 of 2022.*

14. The learned Additional Government Pleader for the respondent on the other hand would submit that the petitioner had wrongly claimed exemption under Entry 10 of Part-A of IV Schedule to the TNVAT Act,

2006 and therefore, the monthly returns that was filed by the petitioner for the respective assessment years were incorrect returns. Therefore, the respondents was justified in passing the impugned assessment orders dated 24.12.2020 in terms of Section 22(4) of the TNVAT Act, 2006 pursuant to notice dated 04.11.2020.

15.The learned Additional Government Pleader for the respondent would submit that the first mentioned impugned order dated 24.12.2020 were not passed in violation of principles of natural justice as replies of the petitioner dated 30.11.2020 were considered before passing the impugned orders dated 24.12.2020 and thereafter impugned notice has been issued on 20.12.2021.

16.It is further submitted that liberty may be given to the petitioner to file statutory appeal before the Appellate Deputy Commissioner under Section 51 of the TNVAT Act, 2006. He therefore prays for dismissal of the Writ Petition.

17. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader

for the respondent.

18.On behalf of the respondent, learned Additional Government Pleader for the respondent placed reliance on the following case:-

i. ***State of Punjab and Others*** *vs.* ***Bhatinda District Cooperative Milk Producers Union Limited****, (2007) 11 SCC 363*

19. The issue on merits as to whether the petitioner was entitled to avail the benefit of exemption under Entry 10 of Part-A of IV Schedule or not now stands confirmed in terms of the decision of the Authority for Advance Rules under Section 48(A) of the TNVAT Act, 2006, vide Advanced Ruling ACAAR vide Order No.88/2014-2015 dated 24.12.2014. That order has not been disturbed.

20. The said Ruling is binding as far as the petitioner and the respondent are concerned. Therefore, in absence of a challenge to the aforesaid ruling of the Authority for clarification in Advanced Ruling ACAAR vide Order No.88/2014-2015 dated 24.12.2014 in the manner known to law, the monthly returns that were filed by the petitioner for the

respective assessment years are to be held to be incorrect and contrary to the above clarification.

21. Sub Section (3) to Section 48-A of the TNVAT Act, 2006 makes it clear that the Ruling of the Advance Ruling Authority is binding not only on the petitioner, but also on the respondents and in respect of goods in relation to which the clarification to Advanced Ruling was sought for.

22.Thus, without double, it has to be construed that in the monthly returns filed, the petitioner had wrongly claimed exemption on the imported textile fabric under Entry 10 of Part-A of IV Schedule was not correct. Therefore, the petitioner was liable to pay the tax confined vide Impugned Assessment Order dated 24.12.2020.

23.Since the monthly returns filed by the petitioner under Section 21 of the TNVAT Act, 2006 read with Rule 7 of the TNVAT Rules, 2007 were incorrect, the respondent was entitled to pass orders dated 24.12.2020 to the best of his judgement after the completion of the year in terms of Section 22 (4) of the TNVAT Act, 2006.

24. There is no limitation prescribed for passing order under Section 22(4) of the TNVAT Act, 2006. The language adopted in Section 22(4) of the TNVAT Act, 2006 merely indicates that the assessment order has to be passed after the completion of that year. It would imply that such assessment orders have to be passed within the reasonable period.

25. However, assessment cannot be kept endlessly open even if returns filed were either incomplete or such returns contained incorrect details or are not accompany the documents prescribed or proof of payment of tax.

26. Assessment orders cannot be passed long after the expiry of the limitation prescribed under Section 27 of the TNVAT Act, 2006, had the petitioner filed proper monthly returns in time with all the particulars as was required for completing the assessment.

27. In this case, if the petitioner had filed correct returns with full particulars, the limitation for reopening the assessment under Section 27 of the TNVAT, Act, 2006 for the respective assessment years, would have expired on the following dates:-

W.P.No.	Assessment Year	Expiry of Limitation
513 of 2022	2011-2012	31.10.2018
516 of 2022	2012-2013	31.10.2019
518 of 2022	2013-2014	31.10.2020

28. Impugned assessment orders dated 24.12.2020 preceeds notices dated 4.11.2020. This was during the period when the country was under lockdown due to out break of Covid-19 pandemic. The Hon'ble Supreme Court has saved the limitation in **In Re: Cognizance For Extension Of Limitation** 2022 (3)SCC 117. Thus, at best only proceedings against the petitioner for the Asessment Year 2013 – 2014 alone would stand protected as the limitation expired on 31.10.2020. The

limitation would have stood saved up to a period of 90 days from 01.3.2022.

29. Therefore, the Impugned Assessment Orders dated 24.12.2020 and Impugned Notices dated 20.12.2021 for Assessment Year 2011-2012 and for Assessment Year 2012-2013 challenged in W.P.No.513 of 2022 and W.P.No. 516 of 2022 are liable to be quashed. There is no merits in challenge to Assessment Orders dated 24.12.2020 and Impugned Notices dated 20.12.2021 for the Assessment Year 2013-2014 in W.P.No.518 of 2022.

30. Thus, **W.P.No.513 of 2022** for Assessment Year 2011-2012 and **W.P.No.516 of 2022** for Assessment Year 2012-2013 challenging the Assessment Order dated 24.12.2020 and Impugned Notice dated 20.12.2021 are allowed.

31. **W.P.No.518 of 2022** for Assessment Year 2013-2014 challenging the Assessment Order dated 24.12.2020 and Impugned

Notice dated 20.12.2021 dated is dismissed with liberty to file a Statutory Appeal before the Appellate Authority within a period of thirty days from the date of receipt of a copy of this order.

32. In the result:-

i. W.P.No.513 of 2022 and W.P.No. 516 of 2022 are allowed;

ii. W.P.No.518 of 2022 is dismissed with liberty to file appeal within a period of thirty days from the date of receipt of a copy of this order;

iii. Consequently, the connected miscellaneous petitions are closed. No costs.

05.02.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No
krk/rgm

C.SARAVANAN, J.

krk/rgm

W.P.Nos.513, 516 & 518 of 2022
and
W.M.P.Nos.547, 548, 549, 550, 552 & 553 of 2022

05.02.2024