



W.P.Nos.1544 & 1546 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:
04.07.2023

Pronounced on:
31.01.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.1544 & 1546 of 2021

and

W.M.P.Nos.1747 & 1749 of 2021

Merit Technologies India Limited,
represented by its Director G.Ramadurai,
E1, First Floor,
Thiru-Vi-Ka Industrial Estate,
Guindy, Chennai – 600 032.

.. Petitioner
(in both cases)

Vs.

The State Tax Officer,
Nandambakkam Assessment Circle,
Third Floor, CT & Registration Department,
South Tower, Block No.19,
Government Farm Village,
Nandanam, Chennai – 600 035.

.. Respondent
(in both cases)

Prayer in W.P.No.1544 of 2021: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the respondent in TIN 33270902819/2010-11 dated 04.12.2020 and quash the same.

Prayer in W.P.No.1546 of 2021: Writ Petition is filed under Article 226



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of the Constitution of India, to issue a Writ of Certiorari to call for the records of the respondent in TIN 33270902819/2011-12 dated 04.12.2020 and quash the same.

(In both cases):

For Petitioner : Mr.R.Kumar

For Respondent : Ms.Amirtha poonkodi Dinakaran
Government Advocate

COMMON ORDER

By this common order, both these three Writ Petitions are being disposed of.

2.The petitioner has challenged the impugned Assessment Orders both dated 04.12.2020 for the Assessment Years 2010-2011 and 2011-2012 passed under the TNVAT Act 2006.

3.The Assessment for the respective years were deemed to have been completed in terms of Section 22 of the TNVAT Act, 2006 on 30.06.2012 and on 31.10.2012 respectively. Therefore, it is submitted that the limitation for revising the Assessment under Section 27 of the TNVAT Act, 2006 expired on 30.06.2018 and 31.10.2018 respectively



from 30.06.2012 and on 31.10.2012.

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4. Earlier, revised assessment orders were passed on 31.03.2015 under CST Act, 1956. As far as TNVAT Act, 2006 was concerned, the petitioner was issued with the first revision notice on 31.07.2017. Thereafter, second notices dated 07.11.2017 were issued followed by third notices dated 15.05.2018 and notices dated 29.10.2020 which have now culminated in the impugned orders both dated 04.12.2020.

5. The specific case of the petitioner is that that as far as Assessment Year 2010-2011 was concerned, the proposal was confined to Rs.4,71,013/-. However, amount was enhanced to Rs.6,34,798/- vide notice dated 15.05.2018.

6. As far as Assessment Year 2011-2012 is concerned, the demand proposed in the notice dated 15.05.2018 was Rs.7,01,029/-. However, the amount was partially increased to Rs.7,42,798/- and after adjusting a sum of Rs.2,85,736/- the balance of amount Rs.4,57,062/- has been confirmed.



7.The learned counsel for the Petitioner would submit that the demand that has been confirmed by the impugned orders are beyond the period of limitation, prescribed under Section 27(1) of the TNVAT Act, 2006.

8.The learned counsel for the petitioner also submits that the respondents have imposed penalty under Section 42(1) read with sub clause (3) of the TNVAT Act, 2006 without issuing a proper notice, interest also can be imposed on the petitioner.

9.The learned counsel for the petitioner relied on the following cases:-

- (i)Kanthimathy Estate, Alancholai, Kanyakumari District Vs. The Assistant Commissioner of Commercial Taxes, Kuzhithurai, Kanyakumari District and another in W.P.(MD).Nos.3056 to 3061 of 2016;**
- (ii)M/s.Bharath Reddy Mix Concrete, Represented by its ParnterP.Saravanan Vs. The Assistant Commissioner (ST) (FAC), Cuddalore Taluk Assessment Circle, Cuddalore, in W.P.No.1066 of 2021;**
- (iii)Tvl.Bharath Traders, Represented by its Partner, N.Venkatesh Vs. The Commissioner of Commercial Taxes, O/o. The Principal and Special Commissioner of Commercial Taxes,**



Ezhilagam, Chepauk, Chennai – 600 005 , in
W.P.(MD).No.15103 of 2015, etc, batch.

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10.The learned Government Advocate for the respondent has also placed reliance on the decision of this Court rendered in the case of *Tvl.North East Construction Contractors, Represented by its Partner, 24-10, V.M.Complex, Old Bangalore Road, Hosur Vs. Assistant Commissioner (ST), Hosur (South), Hosur* dated 08.04.2022 in W.P.No.10835 of 2019.

11.It is further submitted that in the facts peculiar to the present case, it has to be construed that the notice that were issued from 31.07.2017 up to 15.05.2018 and the determination vide impugned orders dated 04.12.2020 are within the limitation prescribed under Section 27 of the TNVAT Act, 2006.

12.Therefore, it is submitted that there is no merits in the submission of the learned counsel for the petitioner.

13.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the



respondent. I have also perused the documents submitted by the counsels.

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14. Section 27 of the Tamil Nadu Value Added Tax Act, 2006, contemplates revision of assessment where whole or any part of the turn over of a business of a dealer who has escaped assessment to tax.

15. The Assessing Authority may subject to provisions of Sub-Section (3), at any time within six years from the date of ‘assessment’, determine to the best of his judgment, the turn over which has escaped assessment and assess the tax payable on such escaped turn over after making such enquiry as it may considered necessary. Section 27 (1) (a) reads as under:

***“The Tamil Nadu Value Added Tax Act,
2006 amended stand as under***

**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



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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.

- (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], reassess the tax due after making such enquiry as it may consider necessary.
- (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 years from the date 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.

* * 1. Notified as 19 thJune 2012 by G.O.No. 82 dated 18 June 2012.

1.These words were substituted for the words ‘five years from the date of assessment order by the assessing authority’ by Section 6 (1) of the Fifth Amendment Act 23 of 2012, effective from a date to be notified and notified as 19 June 2012 by GO.No.82.

2.These words were substituted by Section 6 of the aforesaid Fifth Amendment Act, 23 of 2012 for the words ‘five years from the date of order of assessment by the assessing



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authority’.

- (3) In making an assessment under clause (a) of sub-section (1), the assessing authority may, if it is satisfied that the escape from the assessment is due to wilful non-disclosure of assessable turnover by the dealer, direct the dealer, to pay, in addition to the tax assessed under clause (a) of sub-section (1), by way of penalty a sum which shall be -
- (a) fifty per cent of the tax due on the turnover that was wilfully not disclosed if the tax due on such turnover is not more than ten per cent of the tax paid as per the return;
 - (b) one hundred per cent of the tax due on the turnover that was wilfully not disclosed if the tax due on such turnover is more than ten per cent but not more than fifty per cent of the tax paid as per the return.
 - (c) one hundred and fifty per cent of the tax due on the assessable turnover that was wilfully not disclosed, if the tax due on such turnover is more than fifty per cent of the tax paid as per the return.”

16. Section 27 of the TNVAT Act, 2006 was amended during 2012.

The phrase of five years was substituted with six years. Hon'ble Supreme Court in the case of **Mysore Rolling Mills (P) Ltd., Vs. Collector of Central Excise**, (1987) 1 SCC 695 held that amendment to the Central Excise Rule 10 was intended to relate back and cover a period of five years from the date under the rule. The amendment was held retrospective in operation. Once the rule comes in to existence and the



jurisdiction under that rule is invoked, it has got to cover a period up to five years preceding the date of issue of notice.

17.As far as Input Tax Credit is concerned, under Sub-Section (2) to Section 27, where it is found that the Input Tax Credit has been wrongly availed 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 can determine at any time within a period of six years from the date of the assessment and reverse the Input Tax credit availed and determine the tax due after making such an enquiry as it may be considered and necessary.

18.The only requirement before passing an order is to call upon the assessor regarding reverse of credit as the Assessing Officer has to give the dealer a reasonable opportunity to show cause against such order.

19.The assessment for the respective Assessment Years were deemed to have been completed on 30.06.2012 and on 31.10.2012 by operation of law under Section 22 of TNVAT Act, 2006 as amended with effect from 19.06.2012 vide TN Act 23 of 2012. After the assessments



were deemed to have been completed on 30.06.2012 and 31.10.2012 for the respective Assessment Years, the assessment could be revised only with six years of the deemed assessment on 30.06.2018 and 31.10.2018.

20.However, revised Assessment Orders were passed on 31.03.2015 for these two Assessment Years. The petitioner was issued with two notices dated 31.07.2017 for the Assessment Years 2010-2011 to Assessment Year 2013-2014 followed by a common notice for these Assessment Years on 15.05.2018 and by two separate notices dated 29.10.2020 for these two years.

21.The power to re-open the assessment both under Section 27 (1) (a) or (1) (b) as the case may be is six years from the date of assessment. The expression assessment has been defined in Section (4-A) as follows:

“2.Definitions:- In this Act, unless the context otherwise requires,-

...(4-A) “Assessment” means an assessment made or deemed to have been made under this Act and includes a reassessment or revision of assessment.”

22.Thus, assessment means an assessment made or deemed to have been made under the Act includes the re-assessment or revision of the



assessment. Thus, the revision of the assessment for the respective Assessment Years which were earlier revised on 31.03.2015 are well within the period of limitation under Section 27 (1) (a) and (1) (b) of the Tamil Nadu Value Added Tax Act, 2006. The argument that an assessee is not expected to maintain the records beyond the period prescribed under Rule 6(11) of Tamil Nadu Value Added Tax Rules, 2007 cannot be countenanced. An assessee whose assessment is revised or re-opened by passing an order under Section 27 has to necessarily maintain the records for a period of 6 years thereafter in terms of the above provisions.

23. Therefore, there is no merits in the challenge to the impugned assessment order. The petitioner has to necessarily workout its remedy before the Appellate Commissioner in accordance with the provisions of the TNVAT Act, 2006.

24. These Writ Petitions have been filed on 20.01.2021. Thus, they have been filed within the period of limitation for filing an appeal before the Appellate Commissioner.

25. Since, the petitioner has filed these Writ Petitions within the



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time prescribed for filing an appeal before the Appellate Authority, applying the decision of the Hon'ble Supreme Court in **Assistant Commissioner (CT) LTU, Kakinada & Ors. Vs. M/s. Glaxo Smith Kline Consumer Health Care Limited**, 2020 (36) GSTL (305) SC, the petitioner is given liberty to file a statutory appeal before the Appellate Commissioner within a period of thirty (30) days from the date of receipt of a copy of this order.

26. Accordingly, these Writ Petitions stands dismissed with the above observations. Consequently, the connected Miscellaneous Petitions are closed. No costs.

31.01.2024

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



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To

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The State Tax Officer,
Nandambakkam Assessment Circle,
Third Floor, CT & Registration Department,
South Tower, Block No.19,
Government Farm Village,
Nandanam, Chennai – 600 035.

C.SARAVANAN, J.



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