IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

W.P.No.36653 of 2006

M/s. Dhevi Super Leathers,
No.41-A, EVK Sampath Road,
Vepery, Chennai – 600 007.
.. Petitioner

vs

1.The Commercial Tax Officer,
Vepery Assessment Circle,
Chennai – 600 007.

2.The Secretary,
Tamilnadu Sales Tax Appellate Tribunal,
Second Floor,
City Civil Court Buildings,
Chennai – 600 104. .. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the second respondent in TA No.855 of 2001 quash the impugned proceedings dated 05.12.2005 in view of the law that the revision of assessment for the year TNGST 1991-92 was initiated on 27.3.1998 by the first respondent under Section 16 of the Tamil Nadu General Sales Tax Act, 1959 after the expiry of the period of limitation and further direct that the respondents are not entitled to invoke the exclusion of the period under section 16(4) and section 16(5) of the Tamilnadu General Sales Tax Act, 1959 for computing the period of limitation unless the petitioner's own case was pending before the appellate authority or revisional authority or the Special Tribunal or the Supreme Court for the purposes of calculating the period of limitation.

For Petitioner : Mr.V.Sundareswaran

For Respondents : Ms.Amirta Dinakaran
Government Advocate

ORDER

(Order of the Court was made by Dr.ANITA SUMANTH.,J)

The petitioner is an assessee under the Tamil Nadu General Sales Tax Act, 1959, (in short, 'Act') and challenges an order of the Tamil Nadu Sales Tax Appellate Tribunal (in short, 'Tribunal') dated 05.12.2005. An assessment was made for the period 1991 – 92 on 20.01.1993. Several additions / disallowances were made to the returned turnover.

2. Thereafter, proceedings for re-assessment were initiated in relation to the turnover from Replenishment Licences (REP Licenses) and Cash Compensatory Support (CCS) received towards exports. A notice had been issued proposing assessment of escaped turnover. This notice was dated 27.03.1998.

3. Despite objections, an assessment had come to be made adverse to the petitioner both on the merits of the additions and also on the assumption of jurisdiction under Section 16 of the Act. The matter travelled in appeal, both first and second stages, culminating in the impugned order of the Tribunal.

4. Mr.Sundareswaran, learned counsel appearing for the writ petitioner would assail the concurrent orders of the authorities pointing out that the provisions under Section 16 of the Act, as it stood then, required proceedings for revision of assessment to be made within a period of five years from the end of the period in question.

5. Section 16(1)(a) requires the assessing authority to, within a period of five years from the expiry of the year to which the tax relates, determine the turnover which has escaped assessment. This date, in this case, is 31.03.1997. However, the notice for revision of assessment has

itself been issued only on 27.03.1998 and hence the bar of limitation is the primary argument of the writ petitioner before us.

6. On merits, learned counsel for petitioner would accede to the position that the turnover from sale of REP licenses would have to be brought to tax as turnover, based on subsequent pronouncements of the Hon'ble Supreme Court. However, with respect to the turnover from CCS, he would submit that CCS is itself only in the nature of subsidy and thus turnover on this account would not be covered under the ambit of the Act.

7. Ms.Amirta Dinakaran, learned Standing Counsel, would place full reliance on the prescription under Section 16 (5) extracted supra. Her interpretation of Section 16(5) is that where an appeal / other proceeding in respect of any other assessment / re-assessment, involving a question of law having a direct bearing on the assessment or re-assessment in question, is pending before the Special Tribunal or the Supreme Court, the time of such pendency would have to be excluded in computing the period of limitation for re-assessment.

8. The question of whether turnover from sale of REP Licences was to be taxed as 'turnover' under the provisions of the Commercial

Tax enactments was pending at the instance of several assessees before the Courts and ultimately stood resolved on 04.04.1994 by the Division Bench of this Court in the case of *P.S.Apparels V. Deputy Commercial Tax Officer, T.Nagar East Assessment Circle, Madras* (94 STC 139). Thus, excluding the period till 04.04.1994, the issuance of notice on 27.03.1998 was within a period of five years as prescribed by the Act.

9. She would rely on a judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of *Ujagar Prints and Ors. V. Union of India and Ors.* (74 STC 401), specifically the opinion of S.Ranganathan., J. and a decision of learned Single Judge of this Court passed in the case of *M/s.IFB Industries Ltd vs The Assistant Commissioner, Nungambakkam Assessment Circle and others* in W.P.No.18187 of 2021 & batch dated 11.12.2023.

10. In reply, petitioner would counter that the stipulation under Section 16(5) would only relate to a challenge having been put forth by that specific assessee and cannot be extended to challenges by any other assessees. Thus, according to the petitioner, there is no question of extension of the limitation and Sections 16(4), (5) and (6) have no application to this case.

11. We have heard both learned counsel and studied the case law relied upon carefully.

12. Section 16 of the Act is a self-contained scheme of re-assessment of escaped turnover. In the interests of clarity of narration, Section 16 (1) (a) dealing with assessment of escaped turnover as well as Sections 16 (4), (5) and (6) that have been referred to by the parties, are extracted herein:-

> *Section 16. Assessment of escaped turnover. – (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 (2), at any time within a period of five years from the *[date of order of the final assessment by the assessing authority], determine to the best of its judgement the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such assessment.*
>
> ……..
>
> *Section 16(4) In computing the period of limitation for assessment or reassessment under this section, the time during which the proceedings for assessment or reassessment remained stayed under the orders of a Civil Court or other competent authority shall be excluded.*
>
> *Section 16(5) In computing the period of limitation for assessment or reassessment under this section, the time during which any appeal or other proceeding in respect of*

any other assessment or reassessment is pending before the [Special Tribunal]or the Supreme Court involving a question of law having a direct bearing on the assessment or reassessment in question, shall be excluded.

Section 16(6) In computing the period of limitation for assessment or reassessment under this section, the time during which any appeal or proceeding in respect of any assessment or reassessment of the same or part of the turnover made under any other enactment was pending before any appellate or revisional authority or the [Special Tribunal] or the Supreme Court shall be excluded.

13. The limitation for initiation of proceedings is set out under Section 16(1) (a), to state categorically that proceedings for revision of assessment be passed within a period of five years from the expiry of the year to which the tax relates. The period of assessment in this case is 1991 – 92 and hence the period of five years as stipulated under Section 16(1)(a) would expire as on 31.03.1997. The first notice issued to the petitioner is dated 27.03.1998. There is no dispute on this position.

14. There are certain exclusions that are set out in computing the limitation as aforesaid. Section 16(4) provides for the exclusion of that period during which proceedings for assessment / re-assessment remain stayed under orders of the civil court or other competent authority. This situation does not arise in this case.

15. Section 16(6) excludes the time during which an appeal or proceeding in respect of any assessment / re-assessment was pending before an appellate or revisional authority or the Tribunal or Supreme Court of the same or part of the turnover made under any other enactment. This situation also does not arise in this case.

16. The defence of the Department is premised on sub-section (5) which states that the time during which any appeal or other proceedings in respect of any other assessment / re-assessment is pending before the Special Tribunal or the Supreme Court, involving a question of law, having a direct bearing on the assessment or re-assessment in question, is to be excluded.

17. We are of the categoric view that this clause would only enure to the benefit of an assessee who has itself challenged an assessment or re-assessment or the provisions, giving rise to any other assessment or re-assessment before the Hon'ble Supreme Court. It cannot, in our view, be so wide as to apply in the case of any other assessee, who has not mounted such challenge.

18. To make it clear, in the case of the identical issue having been raised by a specific assessee and pending before the Supreme Court, it is

only that assessee who will have the benefit of the exclusion of the period of such pendency in all other assessments/proceedings before other authorities. The benefit of pendency on such account cannot enure to all other assessees.

19. If this argument of the Revenue were to be accepted it would result in the freeze of limitation in every other case where assessment/proceedings are ongoing involving the issue under challenge. Hence, we are of the view that the circumstances envisaged under sub-section (5) also do not arise in the present case.

20. In the case of *IPB Industries* (supra) relied upon by the Revenue, the argument of limitation was taken in the context of the Tamil Nadu Tax on Entry of Goods into Local Areas Act, 2001 (Entry Tax Act). The learned Single Judge noted the position that in that Entry Tax Act, there is no statutory limitation for the conduct of re-assessments.

21. Hence he proceeded on the basis of the principle that where no statutory limitation is provided, the proceedings would have to be completed/finalized within a reasonable period of time. He took note of the position that the Entry Tax enactment was itself the subject-matter of

challenge before the various High Courts and thereafter before the Hon'ble Supreme Court. While, construing what would be a reasonable period for completion of re-assessments in the specific context of the Entry Tax Act, he took the view that one relevant factor would be the time for which the matters were pending before the Hon'ble Supreme Court and that such period should be excluded.

22. We do not believe that this decision is of any assistance to the Revenue in this case as Section 16 provides for revisions of assessments to be completed within a period of five years. The question of determining a reasonable period as limitation does not arise as the limitation has been specifically and statutorily provided and such period is not elastic beyond the exceptions set out under sub-sections (4), (5) and (6) of Section 16.

23. To reiterate, the circumstances as adumbrated in sub-sections (4), (5) and (6) would relate only in cases where there is identity between the assessees who have mounted challenges as envisaged under the aforementioned clauses, and who seek exclusion of the period when those challenges are pending, and not in the case of all other assessees.

24. This writ petition is allowed. The impugned order of the Tribunal dated 05.12.2005 is set aside. No costs.

[A.S.M., J] [G.A.M., J]
20.08.2024

Index:Yes
Speaking Order
Neutral Citation:Yes
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