IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2024

CORAM :

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

W.P.No.37032 of 2007
and
M.P.No.1 of 2007

Crompton Greaves Ltd.,
Rep. by its Senior Finance Manager,
G.Vijayakumar,
No.3-A, Dr.MGR Salai,
Chennai – 600 034. .. Petitioner

vs

1.The Assistant Commissioner (C.T.)
Fast Tract Assessment Circle III,
IV Floor, Greams Road,
Chennai – 600 006.

2.The Deputy Commissioner (C.T) (Appeals),
3rd Floor, Wavoo Complex,
191, NSC Bose Road,
Chennai – 600 001.

3.The Sales Tax Appellate Tribunal (Main Bench),
Represented by its Secretary,
City Civil Court Buildings,
High Court Complex,
Chennai – 600 104.

4.The State of Tamil Nadu
Rep. by its Deputy Commissioner (CT),
Chennai (North) Division,
Chennai. .. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to call for the records on the files of the third respondent herein in STA No.181 of 2004 (TNGST 1987-88) dated 1.8.2007 and issue a writ of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India and quash the same.

For Petitioner	:	Mr.K.A.Parthasarathy
For Respondents	:	Mr.V.Prashanth Kiran Government Advocate

ORDER

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

The challenge in this writ petition is to an order passed by the Sales Tax Appellate Tribunal (STAT/Tribunal) in STA No. 181 of 2004. The sequence of dates and evens assumes some importance as the main issue which has been argued relates to the bar of limitation to which the parties have confined themselves. The period in question is 1987 – 88. We restrict ourselves to the bare sequence of events and dates as the minute details of transactions are unnecessary to decide the question of bar of limitation.

2. An order of revision of assessment was passed on 06.10.1993 under the provisions of the Central Sales Tax Act, 1956 (CST Act) for the period 1987 – 88. It is relevant to note that no notices were issued under the provisions of the Tamil Nadu General Sales Tax Act, 1959

(TNGST Act) for the aforesaid period. As against the order of assessment dated 06.10.1993, the petitioner filed a first Appeal, which was decided on 25.11.1997.

3. Inter alia, the Appellate Authority was of the view that the transaction in question ought not to have been the subject-matter of an assessment under the provisions of the CST Act but ought to have been examined under the provisions of the TNGST Act. The assessment made on the subject turnover was thus set aside and remanded to the assessing authority in terms of the following order:-

> *"The contract envisages that certain goods and ancillary services should be provided by the supplier (viz.,) design, manufacture, testing, supply and installation and commissioning of 110 KV sub-station with spare parts for substantial expansion and semi-dry conversion of Madukkarai Cement Works (Tamil Nadu). Therefore it has to be treated as Works Contract under Tamil Nadu General Sales Tax Act, 1959 and any assessment has to be considered under Tamil Nadu General Sales Tax Act, 1959 whereas the Assessing Officer has assessed the transaction under Central Sales Tax Act. Further, it is seen that the Assessing Officer has assessed a turnover of Rs.13,89,887/- whereas the bill value worked out to Rs.13,89,887/- only. The discrepancy in the figures should also be reconciled. Hence the assessment made on the turnover of Rs.13,89,887/- is set aside and the matter is remanded back to the Assessing Officer for verification of the above aspects and to pass appropriate orders as law."*

4. Thus, the assessment of the turnover of Rs.13,89,887/- stands nullified for the purposes of the CST Act and a direction was given to the assessing authority to verify whether the turnover was liable to tax

under the provisions of the TNGST Act. The order of the first Appellate Authority dated 25.11.1997 has attained finality. Pursuant to the aforesaid order, a notice came to be issued by the Assistant Commissioner invoking the TNGST Act for the period 1987 – 88 on 12.12.2001.

5. The petitioner made objections on 29.01.2002 inter alia raising the plea of bar of limitation as well. It was specifically pointed out, that the period of limitation had expired and hence a mere direction by the Appellate Authority would not serve to extend the limitation period or revive limitation that had long elapsed. They also pointed out that the order of the first Appellate Authority dated 25.11.1997 had attained finality and this would further support the submission that the proceedings had come to a conclusion and could not be re-opened that too after a period of four years.

6. Overriding the objections filed, an order of Revision of assessment under the provisions of the TNGST Act came to be passed on 30.01.2002 which was assailed in first Appeal. The writ petitioner was successful and the argument on the bar of limitation was accepted by an order dated 23.10.2003 as against which the Revenue filed an appeal before the Tribunal.

7. The Tribunal accepted the contentions of the Revenue primarily for the reason that the order of the first Appellate Authority dated 25.11.1997 had been allowed by the assessee to become final and having not challenged that order, the Tribunal felt, the bar of limitation

could not be raised in the second round of assessment. In any event, the Tribunal has also expressed a view that the second round of proceedings was consequential to the remand made on 25.11.1997, and hence there would be no operation of the bar of limitation and no embargo on the Assessing Authority in proceeding to make a reassessment.

8. Before us, Mr.Parthasarathy, learned counsel for the petitioner, would draw attention to the provisions of Section 16 of the TNGST Act dealing with assessment of escaped turnover. According to him, on a combined appreciation of the limitation set out under Section 16(1) read with Section 16(6), the time for reassessment had long expired.

9. Mr.Prashanth Kiran, who appears for the Revenue would defend the order of the Tribunal on two main grounds. Firstly, he would point out that Section 31 (3) of the TNGST Act that sets out the powers of the first Appellate Authority in disposing a first appeal was couched in wide terms. The provision states that, in the case of an order of assessment, an appellate assistant Commissioner may (i) confirm, reduce, enhance or annul the assessment or the penalty or both, (ii) set aside the assessment and direct the assessing authority to make a fresh assessment and after such further enquiry as may be directed and (iii) pass such other orders as he may think fit.

10. Thus, according to him, there is no prescription of statutory limitation in cases where an order of assessment is to be passed by the

authority in consequence of an appellate order. This is his first contention. For this purpose, he relies on a decision of a Division Bench of this Court in the case of *S.M.K.Sons v State of Tamil Nadu* [1992 84 STC 18 (Mad)], particularly, paragraphs 5 and 13 thereof.

11. His second contention is that if at all the periods of limitation prescribed under Section 16(1) and 16(6) are to be taken concurrently, then limitation would have expired even as on the date when the AAC had passed the appellate order i.e., 25.11.1997. Hence, according to him, the computation of limitation in such a manner would be inappropriate as it would render the order of the first Appellate Authority unworkable.

12. Having heard both learned counsel we are of the considered view that the petitioner must succeed. The original assessment in this case has been made under the provisions of the CST Act 06.10.1993. In computing limitation, we agree that the benefit of limitation both under Section 16(1) and 16(6) must be available to the revenue.

13. Section 16(1) provides for a period of five years from the expiry of the year to which the tax relates for re-assessment / revision of assessment to be made. Under Section 16(6), an extension of time is permitted in circumstances where an appeal or proceeding in respect of any assessment or re-assessment relating to the same or part of the turnover made under any other enactment, was pending before an appellate or revisional authority or before the Supreme Court. In the present case, the appellate proceedings under the CST Act were pending

between 01.11.1993 and 25.11.1997 and hence the benefit of this extended period is available to the Revenue.

14. In our considered view, the period of limitation in the present case ought to be construed in the following manner:-

(i) period of assessment : 1987-1988. Hence the limitation under Section 16(1)(a) would expire on 31.3.1993.

(ii) the extended period as discussed in the paragraphs supra of 4 years and 24 days would run from 01.04.1993. As a result, the period of limitation would stand extended till 25.04.1997.

(iii) Any order or proceedings initiated thereafter, in our considered view, would be hit by the bar of limitation.

15. In the present case, the order of the Tribunal is a culmination of proceedings initiated on 12.12.2001 which is the revisional notice issued under the provisions of the TNGST Act consequent to the remand on 25.11.1997. In view of the discussion supra, we opine that as the bar of limitation ends on 24.04.1997, the revision notice issued on 12.12.2001 is barred by limitation and is hence quashed. As a result, all proceedings thereafter i.e., order of revision of assessment dated 30.01.2002, the order of the first Appellate Authority dated 23.10.2003 and order of the Tribunal dated 01.04.2007 would, as a consequence, have to go.

16. We have carefully considered the submissions of the Revenue and find them to be devoid of merit. The first argument relates to Section 31, specifically sub-section (3) thereof that undoubtedly endow the AAC with wide powers. While it may be acceptable to state that there is no statutory limitation that is provided for consequence to be given after remand under Section 31(3)(a)(ii) of the Act, that position would govern only a case of both remand and consequential order relating to the same enactment i.e., either both being under the provisions of the TNGST Act or both being under the provisions of the CST Act.

17. In the present case, while remand has been made in an appeal relating to an order passed under the CST Act, the impugned proceedings are under the provisions of the TNGST Act. As far as the TNGST is concerned, they constitute independent proceedings and the AAC could, at best, be said to have only given a cue or indication that the proceedings should be brought to tax under the TNGST Act. As an independent statute, proceedings under that statute ought to have been initiated in line with the timeframes indicated thereunder.

18. It was hence incumbent upon the authority to have initiated proceedings under the TNGST Act within the time provided for reassessment under the TNGST Act only. Such timeframe/limitation would not be extended by virtue of a direction given by the AAC in an appeal relating to the CST Act. Hence the argument of the Revenue on this score is rejected.

19. Adverting to the second argument, it is true that even as on 25.11.1997 when the first appellate order was passed by the AAC, limitation for proceedings under the TNGST Act had expired. However, this would have no bearing on the determination of limitation for the TNGST proceedings.

20. As rightly pointed out by the petitioner, it was always open to the assessing authority to have taken up assessment proceeding under the TNGST Act at any time after 01.04.1988. The fact that he chose to issue revision notice only on 12.12.2001 after remand made on 25.11.1997 does not and, cannot, in our view, extend the statutory limitation available under the Act.

21. The order of the AAC dated 25.11.1997 has attained finality. In fact, in our view, there was no necessity for order dated 25.11.1997 to have been challenged, as the directions under that order had been barred by limitation even as on that date and were impossible of compliance.

22. In light of the detailed discussion as aforesaid, this writ petition is allowed. No costs. Connected miscellaneous petition is closed.

[A.S.M., J] [G.A.M., J]
28.08.2024

Index:Yes
Neutral Citation:Yes
ssm

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