IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.09.2024

PRONOUNCED ON : 15.10.2024

CORAM

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.Nos.*4225, 4229 & 4232 of 2022*
and
WMP.Nos.4371, 4373 and 4377 of 2022

Gingee Agricultural Producers Co-operative
Marketing Society Limited
Represented by its General Manager,
S.Ravi
... Petitioner in all W.Ps.

vs

1. The Appellate Deputy Commissioner (CT),
   Cuddalore 607 001.

2. The State Tax Officer (ST)
   Gingee 604 202. ... Respondents in all W.Ps.

Prayer in all W.Ps: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records leading to the issuance of First respondent's order in A.P.No.14/2021-VAT, A.P.No.15/2021-VAT and A.P.No.16/2021-VAT dated 27.10.2021 and quash the same.

For Petitioner : Mr.Adithya Reddy
(in all W.Ps.)

For Respondents : Mr.V.Prashanth Kiran
(in all W.Ps.)

COMMON ORDER

In this writ petition, the petitioner has challenged separate orders all dated 27.10.2021 passed by the first respondent, Appellate Commissioner under Tamil Nadu Value Added Tax Act, 2006 (hereinafter TN VAT Act, 2006), whereby the appeals filed by the petitioner against the revised Assessment orders for the following assessment years have been dismissed. Details of the impugned Assessment Orders are as under:-

Sl.No.	**W.P.No.**	**Assessment Year**	**Revised Assessment order of second respondent**	**Impugned Order of the first respondent (Appellate)**
1	4225/2022	2008-09	04.01.2021	27.10.2021
2	4229/2022	2009-10	31.12.2020	27.10.2021
3	4232/2022	2011-12	07.01.2021	27.10.2021

2. The learned counsel for the petitioner has placed reliance on the decision in the petitioner's own case for the Assessment year 2010-2011 vide order dated 17.03.2021 in W.P.No.6783 of 2021, wherein, the Court taking note of the decision of the Hon'ble Supreme Court in the case of **Sales Tax Officer and Another** Vs. **M/s.Sudarsanam Iyengar and Sons** reported in (1969) 2 SCC 396 and this Court in the case of **Tvl.Victus Dyeings** Vs. **The Assistant Commissioner (ST)** in W.P.Nos.20925 of 2019 batch etc., dated 29.07.2019 has stayed the proceedings.

3. On the other hand, the learned Government Advocate for the respondents would submit that Court has already taken a view in the case of ***M/s.Orient Fans*** Vs. ***The State Tax Officer*** in W.P.Nos.10118 of 2019 vide order dated 08.04.2022, wherein, it has been held that it is sufficient, if notice is issued under within the period specified under Section 27 of TN VAT Act, 2006. The challenge to the impugned orders are primarily on the ground that the assessments were deemed to have been completed under Section 22(2) of TN VAT, Act 2006 for the respective Assessment Years and thereafter notices were issued under Section 84 and 27(1)(a) of

the Act. It is submitted that since the notices were not adjudicated within the reasonable time, they are liable to be quashed as they have been passed long after the expiry of the period prescribed under Section 27(1)(a) of TN VAT Act, 2006.

4. The learned counsel for the petitioner would also submit that in all these writ petitions, earlier notices were issued under Section 84 of the TN VAT Act, 2006 and later notices are issued under section 27(1)(a) of the TN VAT Act, 2006. It is submitted that the notices that were issued subsequently were long after the expiry of period of limitation under Section 27 of TN VAT Act, 2006 and therefore, notices which had preceded the impugned orders were without jurisdiction and contrary to section 27(1)(a) of the said Act.

5. The learned counsel for the petitioner would submit that an identical issue for the Assessment year 2010-2011 came to be passed. The said Assessment order was challenged in W.P.No.6783 of 2021, which was stayed by this Court by its order dated 17.03.2021. Therefore, the impugned orders in these writ petitions where the petitioner has

challenged the order of the first respondent/Appellate Deputy Commissioner are also liable to be quashed.

6. The learned Government Advocate for the respondents on the other hand would submit that the interpretation placed by this Court in W.P.Nos.10118 of 2019 batch etc., in the case of **M/s.Orient Fans** Vs. **The State Tax Officer** vide order dated 08.04.2022 has settled the position of law and therefore the proceedings cannot be said toe beyond the period of limitation. Hence, prays for dismissal of these writ petitions. It is further submitted that the petitioner has an alternate remedy before the Sales Tax Appellate Tribunal and therefore on this count also these writ petitions are liable to be dismissed.

7. The learned Government Advocate for the respondents also submit that although initial notices were issued on 23.07.2014 for the respective Assessment years citing Section 84 of the Act, they were indeed issued under Section 27(1)(a) as they proposed to levy penalty under Section 27(3) of the TN VAT Act, 2006. It is therefore submitted that there was only a typographical error in the notice issued on

23.07.2014. It is therefore submitted that in any event wrong mentioning of the provisions in the notice will not be fatal to the proceedings under Section 27 of the TN VAT Act, 2006. It is therefore submitted that these writ petitions are liable to be dismissed.

8. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents.

9. As far as the limitation is concerned, it is sufficient if a notice is issued for revising the assessment in time. This Court earlier had an occasion to deal with the case of **Tvl.Victus Dyeings, Represented by its Partner A.Loganathan vs . The Assistnt Commissioner (ST), Rural Assessment Circle, Tirupur** in the context of Section 27 of the TNVAT Act, 2006., wherein the dispute related to the Assessment Years 2007-08 to 2010-2011 respectively.

10. As per proviso to Section 22(2) of the TNVAT Act, 2006 , the assessment years were deemed to have been completed on 30.06.2012. Thus, any proceedings to revise the assessment which is deemed to have

been completed under proviso to Section 22(2) of the TNVAT Act, 2006 had to be completed within six years for the deemed assessment under Section 27 of the TNVAT Act, 2006.

11. In ***Tvl.Victus Dyeings*** *(supra)* the notice itself came to be issued on **27.09.2018**. A revised order of the Assessment was passed on **30.05.2019**. Thus, an attempt to make a re-assessment vide notice dated **27.09.2018** followed by an Assessment Order dated **30.05.2019** was held to be bad in law and without jurisdiction. The Court held that taking the date of revised notice as a reckoning date, initiation of re-assessment proceedings was time-barred after the expiry of six years, as the limitation had already elapsed.

12. This decision was cited by the Petitioner in the case of **M/s.Orient Fans (Proprietor – M/s.Orient Paper and Industries Limited) Represented by its Branch Commercial Incharge, No.24, Ethiraj Salai, Egmore, Chennai 600 008 vs. The State Tax Officer, (Backyear Assessment), Egmore Assessment Circle, Chennai** which was also rendered in the context of the Assessment Years 2006-07 to 2010-2011 respectively.

13. In **M/S.Orient Fans** *(Supra)*, the decision of **Tvl. Victus Dyeings** *(Supra)* was distinguished. It was held that the assessment proceedings were not barred by limitation, as the notice seeking to revise the assessment had been issued in time for four Assessment Years except for the Assessment Year 2010-2011. Since the revision notices were within time, the notice could not be challenged in view of the decisions of the Hon'ble Supreme Court. The view taken in the said decision reiterates the legal position applied in M/s.Orient Fans (supra), the following decisions of the Hon'ble Supreme Court were relied on:-

(i) **Ghanshyam Das vs. Regional Assistant Commissioner of Sales Tax, Nagpur,** 1963 INSC 171

(ii) The State of Punjab and Others vs. M/s.Tara Chand Lajpat Rai, (1967)19 STC 493

(iii)The State of Punjab and Another vs. Murlidhar Mahabir Parshad , (1968) 21 STC 29

(iv) **Additional Assistant Commissioer of Sales Tax, Indore Region, Indore vs. Firm Jagmohandas Vijay Kumar,** (1970) 25 STC 74

14. In **Ghanshyam Das vs. Regional Assistant Commissioner of Sales Tax, Nagpur,** Limitation under Section 11 A (1) of the Central Provinces and Berar Sales Tax Act, 1947 . Section 11-A(1) of the Act, fell for consideration under Section 11 A (1) of the Central Provinces and Berar Sales Tax Act, 1947 read as under :-

> "*Section 11A(1): If in consequence of any information which has come into his possession, the Commissioner is satisfied that any turnover of a dealer during any period .... has escaped assessment .... the Commissioner may****, at any time within three calendar*** *years* ***from the expiry of such period****........ proceed in such manner as may be prescribed to ..... assess .... the tax payable on any such turnover.*"

15. The Court held as follows :-

> *Under Section 11-A of the Act the period of 3 years has to be calculated from the expiry of the period in regard whereto any turnover has escaped assessment. As the unit of assessment is a quarter, the period in s. 11-A can only mean a quarter and it cannot be further split up into months, weeks and days. The said period is the fourth quarter and it expired on October 31, 1951. If so, it follows that the Commissioner has jurisdiction to assess the turnover in respect of the entire fourth quarter* ***as the notice was issued within three years from the***

expiry of the said quarter.

16. The Hon'ble Supreme Court in ***The State of Punjab and Others vs. M/s.Tara Chand Lajpat Rai*** supra while answering a similar issue of Limitation in Section ***11(2) of the Punjab General Sales Tax Act, 1948*** followed its views in Ghanshyamadas' s case supra and held as under :-

> "*Reliance, however, was placed on two decisions of the High Court of Punjab: *M/s. Rameshwar Lal Sarup Chand v. Excise and Taxation Officer and # Jagat Ram Om Parkash v. Excise and Taxation Officer, Assessing Authority, Amritsar. Neither of these decisions would be of assistance as the question which was canvassed in Ghanshyamdas's case regarding* ***assessment proceedings having commenced within time and then remaining pending did not come up for consideration. Since the said notice dated January 11, 1957, was served on the Respondent-firm before the expiry of three years from the respective dates for furnishing the returns, the assessment proceedings must be held to have commenced from that date which was within time and thus the assessment proceedings remained pending until they were terminated by the assessment order****. Though that order was finalised after the expiry of three years from the said period, it could not be attacked on the ground of its being beyond limitation and therefore without jurisdiction. The order passed by the High Court allowing the Respondent's writ petition has, therefore, to be set aside. The appeal succeeds and the writ petition is dismissed. In the circumstances of the case, however, we do not*

propose to pass any order as to costs. Appeal allowed.

**M/s. Rameshwar Lal Sarup Chand v. Excise and Taxation Officer*

#Jagat Ram Om Parkash v. Excise and Taxation Officer, Assessing Authority, Amritsar."

17. In ***The State of Punjab and Another vs. Murlidhar Mahabir Parshad,*** (1968) 21 STC 29, wherein the above case, the Court was concerned with limitation under **Section 11** of the **Central Tax Act** which was amended by **Section 7** of the **East Punjab General Sales Tax (Amendment) Act, 1952** and later amended in the year 1955, by **Section 3 of the East Punjab General Sales Tax (Amendment) Act(No.4 of 1955). Section 11** of the **East Punjab General Sales Tax(Amendment) Act, 1952,** reads as under:-

"11. (1) If the Assessing Authority is satisfied without requiring the presence of a registered dealer or the production by him of any evidence that the returns furnished in respect of any period are correct and complete, he shall assess the amount of tax due from the dealer on the basis of such returns.

(2) If the Assessing Authority is not satisfied without requiring the presence of a registered

dealer who furnished the returns or production of evidence that the returns furnished in respect of any period are correct and complete, he shall serve on such dealer a notice in the prescribed manner requiring him, on a date and at a place specified therein, either to attend in person or to produce or to cause to be produced any evidence on which such dealer may rely in support of such returns.

(3) On the day specified in the notice or as soon afterwards as may be, the Assessing Authority shall, after hearing such evidence as the dealer may produce, and such other evidence as the Assessing Authority may require on specified points, assess the amount of tax due from the dealer.

(4) If a registered dealer, having furnished returns in respect of a period, fails to comply with the terms of a notice issued under sub- section (2), the Assessing Authority ***shall within three years*** *after the expiry of such period, proceed to assess to the best of his judgment the amount of the tax due from the dealer.*

(5) If a registered dealer does not furnish returns in respect of any period by the prescribed date, the Assessing Authority shall within three years after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed to assess to the best of his judgment, the amount of tax, if any, due from the dealer."

18. A reading of the above proviso indicate that a limitation of three years was prescribed for assessment best Judgment, from the date of return and where no return was filed, within three years after the expiry of such period, after giving the dealer, a reasonable opportunity of being heard. The Hon'ble Supreme Court held if *proceedings are taken within the prescribed time though the assessment is finalised subsequently even after the expiry of the prescribed period, no question of limitation would arise*. Relevant paragraph of said decision reads as under :-

> "*In other words, the assessment proceedings commence in the case of a registered dealer either when he furnishes a return or when a notice is issued to him under section 11(4) or 10(3), and if such proceedings are taken within the prescribed time though the assessment is finalised subsequently even after the expiry of the prescribed period, no question of limitation would arise.*"

19. In **Additional Assistant Commissioer of Sales Tax, Indore Region, Indore vs. Firm Jagmohandas Vijay Kumar,** (1970) 25 STC 74, the Court was concerned with **Section 8 ((1)(a)** and **(b) of the Mahya Bharat Sales Tax Act, 1950. Section 8(1)(a)** and **(b)** and **Section 10 of the Mahya Bharat Sales Tax Act, 1950**.

20. The dispute that arose in the above case was under the provision of the **Madhya Bharat Sales Tax Act, 1950**, which later stood replaced by **Madhya Bharat General Sales Tax Act, 1959**. There the Assessing Officer had issued a notice under **Section 8(2)** of the **Madhya Bharat Sales Tax Act, 1950**, to the dealer to assess the turnover which had escaped assessment.

21. Relevant provisions read as under :-

Section 8	
(1)(a)*Assessment of taxable turnover and determination of tax due for any year shall be made after the returns for all the periods of that year have become due:* *Provided that in the case of Melas the assessment shall be made as soon as the return of turnover has been received.*	(1)(b): *Notwithstanding anything contained in clause (a), if any dealer fails to submit a return under Section 7(1) for the prescribed period within the prescribed time the Assessing Authority shall, after making such enquiry as he considers necessary and after giving the dealer a reasonable opportunity of being heard, determine the turnover of the dealer for the said period to the best of his judgment and assess the tax*

	on the basis thereof. This assessment, subject to the provisions of Section 10 and to such orders as may be passed in appeal or revision, shall be final for the period".
Section 10 : *Assessment of tax and a levy of licence fees, or registration fees or exemption fees incorrectly assessed.— If for any reason the whole or any part of the turnover of business of a dealer has escaped assessment to the tax, or if the licence fee, registration fee or exemption fee has escaped levy or has been assessed at too low a rate in any year, the assessing authority at any time within a period of three years next succeeding that to which the tax or the licence fee, registration fee or the exemption fee relates, assess the tax payable on the turnover which has escaped assessment or levy the correct amount of licence fee, registration fee or exemption fee, after issuing a notice to the dealer and after making such inquiry as he considers necessary."*	

22. The above provisions indicates that the limitation of three years was prescribed. Answering the point on the limitation, the Court held as under :-

> "*We are therefore unable to accept the contention of the Respondent that the case in one of escaped assessment and the period of limitation contemplated by Section 10 of the Act is applicable to the case. The reason is that once the proceedings for assessment are initiated under Section 8(1)(a) or (b) it cannot be said that the turnover has escaped assessment unless the proceedings have come to a close.*"

23. the Court held that if proceedings are taken within the prescribed time though the assessment is finalised subsequently even after the expiry of the prescribed period, no question of limitation would arise and Section 10 was not attracted. The Court further held as under :-

> "*In other words, the assessment proceedings commence in the case of a registered dealer either when he furnishes a return or when a notice is issued to him under Section 11(4) or Section 10(3), and if such proceedings are taken within the prescribed time though the assessment is finalised subsequently even after the expiry of the prescribed period, no question of limitation would arise. The view expressed by this court in* ***Ghanshyam Das v. Regional Assistant Commissioner of Sales Tax, Nagpur*** *has been followed by the court in two recent cases —* ***Regional Assistant Commissioner of Sales Tax, Indore v. Malwa Vanaspati & Chemical Co. Ltd.***

> *[21 STC 431] and* ***State of Punjab v. Murlidhar Mahabir Prasad*** *[21 SC 29] in which the material facts are almost parallel to those in the present case. In view of the principle laid down by these decisions we hold that in the present case the proceedings for assessment to sales tax taken against the Respondent for the year 1955-56 by the assessing authorities are legally valid and the Respondent has made out no case for grant of a writ under Article 226 of the Constitution for quashing those proceedings or for quashing the notice issued on March 16, 1963 or the order of the appellant dated July 18, 1963."*

24. The decisions cited by the learned counsel for the petitioner are not relevant to the facts of the case. The petitioner has merely secured favourable orders of this Court in W.P.No.6783 of 2021 vide order dated 17.03.2021 for the Assessment Year 2010-11 whereby proceedings initiated by the respondent Sales Tax Officer in TIN.33664740070/2010-2011-Internal Audit Defect No.48/8 dated 05.02.2021 was stayed on 17.03.2021.

25. As far as the facts of these cases for the respective Assessment years are concerned, Assessment Orders were passed under Section **22(2)**

of the TN VAT Act, 2006. Thereafter, notices were issued on **23.07.2014** purportedly under Section 84 of the TN VAT, Act, 2005. Subsequently, notices under Section 27(1)(a) of the Act were also issued. Details are captured below:-

Table II

W.P.No.	Assessment Year	A.O under Section 22(3)	Notice under Section 84	Notice under Section 27(1)(a)
4225/2022	2008-09	18.02.2011	23.07.2014	18.11.2019
4229/2022	2009-10	26.03.2011	23.07.2014	06.02.2020
4232/2022	2011-12	11.06.2012	23.07.2014	06.02.2020

26. A reading of the above notices dated 23.07.2014 issued for the respective Assessment Years indicate that these notices were issued under Section 27 of the Act, as they also propose to levy penalty under Section 27(3) of the TN VAT Act, 2006.

27. These proceedings have culminated in the revised Assessment Orders all dated 04.01.2021, 31.12.2020, 07.01.2021 as mentioned in

Table-I. In the reply to the notices issued under Section 27(1)(a) of the Act, there is a reference to a previous notice issued under Section 84 of the TN VAT Act. 2006 on 27.03.2014. The petitioner had not disputed the same in the reply to notices issued subsequently under Section 27(1)(a) of the Act on 18.11.2019 and on 06.02.2020 for the relevant Assessment years.

28. The petitioner had then filed W.P.No.6783 of 2021, wherein the Petitioner challenging the proceedings mentioned above for the Assessment Year 2010-11 and had secured on interim order on 17.03.2021. Therefore, the Petitioner requested the respondent-Assessing Officer to await for the outcome of the proceedings in W.P.No.6783 of 2021.

29. This is evident from a reading of the replies of the petitioner dated 31.12.2019, 24.02.2000 and 24.02.2020 for the respective Assessment years. Since the petitioner failed to respond to the second set of notices issued on 06.02.2020 for the respective Assessment Years, the

respective Assessment Orders have been passed for the Assessment Years as detailed in Table-I on 04.01.2021, 31.12.2020 and 07.01.2021, the appeals filed by the petitioner before the first respondent were dismissed vide impugned order.

30. It is a well settled principle of law that mere mentioning of a wrong provision or non-mentioning of a provision would not invalidate an order, if the court and/or statutory authority had the requisite jurisdiction therefor.

31. In this connection a reference is made to the decisions of the Hon'ble Supreme Court in **Ram Sunder Ram v. Union of India & Ors.** [2007 (9) SCALE 197], wherein it was held:

> "*….. It appears that the competent authority has wrongly quoted Section 20 in the order of discharge whereas, in fact, the order of discharge has to be read having been passed under Section 22 of the Army Act. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does*

exist and can be traced to a source available in law [see N. Mani v. Sangeetha Theatre and Ors. (2004) 12 SCC 278]. Thus, quoting of wrong provision of Section 20 in the order of discharge of the appellant by the competent authority does not take away the jurisdiction of the authority under Section 22 of the Army Act. Therefore, the order of discharge of the appellant from the army service cannot be vitiated on this sole ground as contended by the Learned Counsel for the appellant."

32. In ***N. Mani v. Sangeetha Theatres & Ors.*** [(2004) 12 SCC 278], also athis Hon'ble Supreme Court reiterated the above principle. Relevant portion reads as follows:-

"*9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law."*

33. It is therefore considered that the notices that were issued on 23.07.2014 were also notices issued under Section 27(1)(a) of the TN VAT, Act, 2006. There was only a typographical error in the notices and

they were supposed to be issued under Section 27(1)(a) of the TN VAT Act, 2006. The tenor of the notice also make it clear that they were issued for the purpose of revision of Assessment, though Section 84 of the TN VAT Act, 2006 can be invoked only to correct errors apparent face on record.

34. It is noticed that, for the Assessment Years 2010-11 and 2012-13, Assessment Orders were passed on 31.07.2014 and on 09.10.2014. After the Assessment was completed on 16.05.2013. The Assessing Officer thereafter issued notice under Section 84 of the Act on 30.04.2014. After filing a reply to Section 84 notice, the Appellant raised certain grounds by filing a petition under Section 84 of the TN VAT Act, 2006. The grounds raised by the petitioner on 12.09.2014 was rejected by the Assessing Officer stating that the powers under Section 84 of the Act could not be invoked for these Assessment Years namely 2010-11 and 2012-13 which culminated in orders dated 31.07.2014.

35. Challenging the aforesaid order dated 31.07.2014, the petitioner

herein filed W.P.No.22798 of 2015 , which came to be dismissed on 13.10.2020. Against which, the petitioner had preferred an appeal before this Court in W.A.No.143 of 2021. The said writ appeal was allowed in favour of the petitioner on 20.01.2021, with the following observations:-

> "*6. After elaborately hearing the learned counsel for the parties, we find that there is a primordial mistake committed by the Assessing Officer by invoking Section 84 of the Act for reopening the assessment. Mr. Mohammed Shaffiq, learned Special Government Pleader appearing for the respondent is right in his submission that power to reopen assessment is traceable to Section 27 of the TNVAT Act. It is the further submission of the learned Special Government Pleader that at best making a reference to Section 84 of the Act in the show cause notice dated 30.04.2014 can be treated as quoting a wrong provision and if the goods sold by the appellant-Society to the fair price shops are exigible to tax, then there is an error in the assessment, which needs to be rectified. Under normal circumstances, we would have laboured on this issue, but the facts of the present case precludes us from doing so.* ***It is not as if the Assessing Officer was not aware of what was the scope of his power under Section 84 of the Act as could be seen from the order dated 09.10.2014, wherein he states that the power can be exercised only for correction of clerical and arithmetical mistakes.*** *Therefore, we are not inclined to accept the submission that referring to Section 84 in the show cause notice*

dated 30.04.2014 was quoting a wrong provision of the Act.

7. *In any event, if the assessment has to be reopened, it requires to be done in terms of Section 27 (1) of the Act. The Assessing Officer is bound to disclose as to under which Sub-Section, he proposes to bring the case of the dealer for assessing the turn over on the ground that the sale has escaped assessment or the dealer has been assessed at a lower rate than the rate at which it is assessable.* ***A plain reading of the show cause notice dated 30.04.2014 will clearly show that there is no such proposal made by the Assessing Officer assuming the Assessing Officer invoked his power under Section 27 (1) of the Act.*** *Furthermore, the Assessing Officer, while taking note of the objections raised by the appellant dated 20.05.2014, has not given any reasons as to why the Government letter referred to by the appellant is not relevant to the appellant's case. One more opportunity was available to the Assessing Officer to pass a speaking order, when the appellant filed an application under Section 84, dated 12.09.2014. However, the Assessing Officer did not go into the correctness of the claim made by the appellant by referring to G.O.P.No.272, Revenue dated 11.02.1967, which was issued when the erstwhile Tamil Nadu General Sales Tax Act was invoked and the Entry 43 of Part B of Fourth Schedule of the TNVAT Act. Therefore, we are of the considered view that*

reopening of the assessment is bad in law. If we are to approve the stand taken by the Assessing Officer in the order dated 09.10.2014 and hold that the power under Section 84 of the Act is to correct only arithmetical and clerical mistakes, then we have to consequently hold that the reopening of the assessment invoking Section 84 of the Act vide notice dated 30.04.2014 and the consequential revised assessment order dated 09.06.2014, as illegal. Therefore, considering the case in both ways, the Revenue cannot succeed.

8. The learned counsel for the appellant has referred to a decision in the case of M/s.Sujana towers Limited vs The Assistant Commissioner (CT) in W.P.No.30304 of 2014 dated 20.11.2014. In the said decision, the learned Single Bench of this Court had considered the scope of Section 84 of the Act and observed that the power under Section 84 can be invoked to correct errors, more particularly, when records were never called for and those records were anterior to the pre-assessment notice and the reply given by the dealer was not considered.

9. Thus, for the above reasons, we are inclined to allow the appeal and interfere with the order passed by the Assessing Officer. Accordingly, the Writ Appeal is allowed and the order passed in the writ petition is set aside. Consequently, the orders passed by the respondent dated 09.06.2014 and 09.10.2014 are quashed. No costs. Connected miscellaneous petition is closed".

36. In the above case, the show case notice dated 30.04.2014 did not disclose any proposal to levy tax on escaped tax. The Court had itself observed that in a plain reading of the show cause notice dated 30.04.2014 showed that there was no proposal made by the Assessing Officer assuming that the Assessing Officer invoked his power under Section 27(1) of the TN VAT Act, 2006, whereas in the present case, the tenor of the notice dated 23.07.2014 clearly shows an intention to levy tax on escaped turnover and the proposal to levy penalty under Section 27(3) of the TN VAT Act, 2006. This conclusion is further buttressed by the fact that the subject of the notice dated 23.07.2014 expressly mentions that it was for the purpose of revision, though the provision stated may be erroneous.

37. The subject in the respective notices dated 23.07.2014 also state "Revision of Assessment" although under Section 84. As mentioned above the machinery for revision of assessment is only under Section 27 of the TN VAT Act, 2006.

38. Having concluded that the notices issued in the year 2014 dated 23.07.2014 were indeed notices under Section 27(1)(a) of the TN VAT Act, it has to be held that the the Assessments completed by the second respondent dated 04.01.2021 , 31.12.2020 and on 07.01.2021 were within the period of limitation prescribed under Section 27(1)(a) of the TN VAT Act, 2006 in view of the decisions of the Hon'ble Supreme Court, as cited above and followed in **M/s.Orient Fans** (*supra)*.

39. In the result, these writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

15.10.2024

Index : Yes/No

Internet : Yes/No

Speaking : Non-speaking Order

Neutral Citation :

C.SARAVANAN, J.

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To

1. The Appellate Deputy Commissioner (CT),
   Cuddalore 607 001.

2. The State Tax Officer (ST)
   Gingee 604 202.

Pre-delivery Order in Common Order

in W.P.Nos.4225, 4229 & 4232 of 2022

15.10.2024