



W.P.No.7872 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:
16.08.2023

Pronounced on:
05.02.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.7872 of 2021

and

W.M.P.Nos.8402 and 8403 of 2021

M/s.Indira, proprietrix,
M/s.Bala Enterprises,
Having Office at
No.17, Indira Gandhi Street,
Anna MGR Nagar,
Pallikaranai,
Chennai – 600 100.

... Petitioner

Vs.

1. The Assistant Commissioner (State Tax)
Medavakkam Assessment Circle,
Integrated Commercial Taxes and
Registration Department,
Nandanam,
Chennai – 600 035.
2. The State Tax Officer,
Medavakkam Assessment Circle,
Integrated Commercial Taxes and
Registration Department,
Nandanam,
Chennai – 600 035.
3. The Assistant Commissioner (Sales Tax),



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Nanganallur Assessment Circle,
Block No:19, Room No:224,
Second Floor, Integrated Commercial Taxes
and Registration Department,
Nandanam,
Chennai – 600 035.

4. The State Tax Officer,
Nanganallur Assessment Circle,
Block No:19, Room No:224,
Second Floor, Integrated Commercial Taxes
and Registration Department,
Nandanam,
Chennai – 600 035.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the respondents in proceedings in TIN No.33410988393 dated 08.05.2019, 29.05.2019 and 23.12.2019 and quash the same.

For Petitioner : Dr.S.Vidya

For Respondents : Ms.Amirtha Poonkodi Dinakaran
Government Advocate

ORDER

The petitioner herein had challenged the impugned notice dated 08.05.2019 and 29.05.2019 issued by the first and second respondents to the petitioner and the impugned assessment orders passed by the third respondent on 23.12.2019, whereby, the tax demanded in these notices have been confirmed against the petitioner for the period between



2009-2010 and 2014-2015.

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2. The specific case of the petitioner is that a search took place at the place of business of the petitioner on 21.07.2014. However, the impugned notices dated 08.05.2019 and 29.05.2019 were issued after a lapse of five years for these assessment years. It is submitted that the procedure adopted was clearly contrary to the mandatory provision to the Section 65(4) of Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as TNVAT Act, 2006) and Circular No.Q3/3259/2010, dated 14.06.2010.

3. That apart, it is submitted that the accounts of the petitioner were frozen without prior notice to the petitioner on 12.06.2019 and on 14.06.2019 even before the impugned Assessment Orders dated 23.12.2019 were passed.

4. The learned counsel for the petitioner relied upon the decision of this Court rendered in ***Joint Commissioner (CT), Chennai & Others Vs Original Vel Sporting News*** made in W.A.No.1757 of 2019, dated 04.06.2019. That apart, the learned counsel for the petitioner would



submit that the determination of the tax liability of the petitioner under Section 27 of TNVAT Act, 2006 was beyond the period of limitation for the respective assessment years. In this connection, the learned counsel had brought the attention to the details of time barred assessment as below:-

Sl. No	Year	Period of years permitted for revision	Date of Deemed assessment if the condition fulfilled	Date of expiry of the period for making revision	Date of revision order passed	Whether barred by limitation or within the time
01	2009-2010	Six years	30.06.2012	30.06.2018	23.12.2019	Barred
02	2010-2011	Six years	30.06.2012	30.06.2018	23.12.2019	Barred
03	2011-2012	Six years	31.10.2012	31.10.2018	23.12.2019	Barred
04	2012-2013	Six years	31.10.2013	31.10.2019	23.12.2019	Barred
05	2013-2014	Six years	31.10.2014	31.10.2020	23.12.2019	Within limitation
06	2014-2015	Six years	31.10.2015	31.10.2021	23.12.2019	Within limitation

5. The learned counsel for the respondents submitted that the impugned orders are well reasoned and do not warrant any interference. It is submitted that the petitioner was not paying the tax and therefore, an inspection was carried out on 21.07.2014 and thereafter, notices were issued on 08.05.2019 and 29.05.2019 and after the petitioner was called for hearing which have culminated in the impugned orders on



23.12.2019 for the Assessment Year 2009-2010 to 2014-2015. It is further submitted that at the time of inspection, the petitioner was unable to produce any documents to show that the petitioner was maintaining proper Books of Accounts. It is submitted that there was proper authorisation by the Joint Commissioner, and it is based on the authorisation of the Joint Commissioner inspection was carried out and therefore, there is no basis for interfering with the impugned order.

6. The learned counsel for the respondents would further submits that the Writ Petition is hopelessly time barred and liable to be dismissed on account of lapses. In this connection, the decision of the Hon'ble Supreme Court in **Assistant Commissioner (CT) LTU, Kakinada and Others vs. Glaxo Smith Kline Consumer Health Care Limited**, (2020) 19 SCC 681, 2020 SCC Online SC 440 is invited. It is further submitted that in any event the notices were issued in time for the respective assessment years and therefore, there is no scope for interference and hence, prayed for dismissal of the Writ Petition.

7. I have considered the arguments advanced by the learned



counsel for the petitioner and the learned Government Advocate for the respondent.

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8. The petitioner's place of business was inspected by the Commercial Tax Officer, Group-VI, Enforcement (South). Statement was recorded from the petitioner on 29.04.2014. The Statement recorded from the petitioner indicates that petitioner had carried on business from different Assessment Circles with different names at different point of time.

9. The petitioner has also admitted having maintained separate accounts with seven different banks which have been attached. The petitioner had undertaken to furnish the details of the petitioner's invoices and returns and produce the same as and when called for as the accountant of the petitioner was out of station. In the statement, the petitioner has also admitted to that she has rendered work M/s. Universal Telecommunications India Private Limited for the branch office in Tamil Nadu, Karnataka and Madhya Pradesh and payments were received against the invoices raised by the petitioner and they had deducted tax.

10. The petitioner has however not furnished any of the details



called. All that the petitioner could furnish was the audited balance sheet for the assessment years 2011-12 and 2012-13 and copies of the work orders available and Form T and few Bank Statements.

11. The case of the petitioners that the impugned notices and the impugned orders passed for the respective assessment years by invoking the powers under section 64 (4) was contrary to the Circular dated 14.6.2010 bearing reference Q3/3259/2010 of the Principal Sec/Commissioner Of Commercial Taxes,Chepauk, Chennai 600005 issued in the context of section 64 of the TNVAT Act, 2006. It is submitted that as per the aforesaid provision, the Commissioner may order for audit of business of any registered dealer by an officer not below the rank of Deputy Commercial Tax Office .

12. It is further case of the petitioner that as per the above circular the time limit for implementation of the Audit Reports or Inspection Proposals by the assessing officer shall not exceed 3 months from the date of receipt of such Audit Reports or Inspection Proposals.

13. However, a reading of paragraph 7 of the above circular



indicates that if the implementation of the Audit or Inspection Reports is not made within a period of three months of receipt of such Proposals, the Assessing Officer has to inform the Territorial Deputy Commissioner or the Joint Commissioner as the case may be, specify the reasons for non-implementation of such proposal.

14. The decision of the Hon'ble Division Bench of this Court in the case of **M/s. V.V.V and Sons Edible Oils vs. The Joint Commissioner(CT)**, in W.A.(MD).No.1257 of 2013 dated 21.09.2022 relied upon by the petitioner merely recognizes that the circular issued by the Principal Secretary/Commissioner of Commercial Taxes. As a matter of fact, the circular is neither binding on the petitioner nor on the Court as held by the Hon'ble Supreme Court in **Commissioner of Central Excise, Bolpur Vs. M/s.Ratan Melting and Wire Industries**, 2008 (231) ELT 32(SC). Therefore, the plea that no notice was issued pursuant to the Audit Inspection on 29.04.2014 within three months can be countenanced.



15. In this case the court is concerned with the assessment years 2009-10 to 2014-15. The assessment would have been deemed to have been completed under section 22 of TNVAT Act, 2006 as amended by Tamil Nadu Act 23 of 2012 with effect from 19.06.2012, only if returns filed by the petition before the Commercial Tax Department were complete together with the required documents as is contemplated under Rule 7 of the TNVAT Rules, 2007.

16. Both Section 20(4) of the TNVAT Act, 2006 and 25(1) of the TNVAT Act, 2006 deals with the similar situation. They deal with the procedure to be followed by the Assessing Officer. Section 22(4) TNVAT Act, 2006 specifically deals with a situation where if no return is submitted by the dealer for any period of the year or if the return filed is incomplete or incorrect, or if not accompanied with any of the documents prescribed or proof of payment of tax, the assessing authority shall, after making such enquiry as it may consider necessary, assess the dealer to the best of its judgment, subject to such conditions as may be prescribed, after the completion of that year.



17. Section 25(1) of the TNVAT Act, 2006 also deals with a similar situation. In both cases the Assessing Officer has to pass an order of assessment in Section 22(4) of the TNVAT Act, 2006. The Assessing Officer has to pass an order of assessment after the completion of the assessment.

18. In 25(1) of the TNVAT Act, 2006 under the somewhat similar circumstances, the Assessing Officer has to determine the tax payable by an assessee provisionally.

19. Both Section 22(4) of the TNVAT Act, 2006 and Section 25 of the TNVAT Act, 2006 are reproduced below:-

<i>Section 22 (4) of the Tamil Nadu Value Added Tax Act, 2006</i>	<i>Section 25 of the Tamil Nadu Value Added Tax Act, 2006</i>
<i>22. Deemed Assessment and procedure to be followed by assessing authority:-</i> 1) 2) 3) ... 4) <i>If no return is submitted by the dealer for any period of the year or if the return filed is incomplete or incorrect, or if not accompanied with any of the documents prescribed or proof of payment of tax, the assessing</i>	<i>25. Procedure to be followed in assessment of certain cases:-</i> 1) <i>If any dealer who is liable to pay tax under this Act fails to submit return within the prescribed period, or if the return submitted by him appears to the assessing authority to be incomplete or incorrect, the assessing authority may, after making such en quiry as it considers necessary, determine provisionally the</i>



authority shall, after making such enquiry as it may consider necessary, assess the dealer to the best of its judgment, subject to such conditions as may be prescribed, after the completion of that year:

Provided that before taking action under this sub-section, the dealer shall be given a reasonable opportunity of being heard.

tax payable by the dealer to the best of its judgment

Provided that before taking action under this sub-section on the ground that the return submitted by the dealer is incomplete or incorrect, the dealer shall be given a reasonable opportunity of proving the correctness or completeness of the return submitted by him.

2) If the assessing authority has reason to believe that the tax determined by it for any period was based on too low a turnover or was made at too low a rate or was based on too high a turnover or was made at too high a rate, it may enhance or reduce, as the case may be, such determination of tax:

Provided that before making an enhancement of the tax payable as aforesaid, the assessing authority shall give a reasonable opportunity to the dealer to show cause against such enhancement and make such enquiry as it may consider necessary.

3) The determination and collection of tax under this section shall be subject to such adjustment as may be prescribed on the completion of assessment in the manner prescribed.

20. If no returns were filed or if the returns filed were incomplete

or returns filed were incorrect or did not accompany any of the



documents prescribed with proof of payment of tax, the Assessing Officer has to make a proper enquiry and assess a dealer to the best of this judgement, subject to such conditions as may be prescribed, after the completion of the year.

21. There are no records to substantiate that the petitioner had filed returns in time for the respective assessment years in various assessment circles as is contemplated in Rule 7 of the TNVAT Rules, 2007. No Assessment Order was passed by the Assessing Officer for the years in question. Therefore, question of either inferring deemed assessment as is contemplated under section 22 (1) and (2) of the TNVAT Act, 2006 or actual assessment would not arise for the purpose of computation of limitation under Section 27 of the TNVAT Act, 2006.

22. Since no Assessment Order came to be passed, question of the petitioner getting an opportunity to file a fresh return as is contemplated under section 22 (6) (a), (b) or (c) of the TNVAT Act, 2006 also did not arise.

23. Section 25 of the TNVAT Act, 2006, specifically deals with the



proceedings where an Assessee liable to pay tax fails to submit a return within the prescribed period or return submitted by an Assessee appears to be incomplete or incorrect, the Assessing Officer may after making such enquiry as may be considered necessary, determine the tax payable provisionally by such dealer to the best of this judgement. There is no time limit prescribed under section 25 of the of the TNVAT Act, 2006.

24. Since no returns were filed by the petitioner in time or thereafter as is prescribed under Rule 7 of the TNVAT Rules, 2007, it has to be construed that the Impugned Assessments dated 23.12.2019 is the first assessment passed by the Assessing Officer under Section 22(4) of the TNVAT Act, 2006.

25. The limitation for reopening the Assessment under Section 27 of the TNVAT Act, 2006 will apply only six years thereafter. Therefore, there is no merits in the challenge to the Impugned Order. Since the demand has now been confirmed there cannot be any interference with the Impugned Notices issued to the respective banks attaching the accounts of the petitioners maintained with them. Therefore, this writ petition has to fail. Accordingly, the above writ petition is dismissed.



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26. It is noticed that the petitioner has paid only single Court fee for all the writ petitions, whereas the petitioner should have filed separate writ petitions challenging the notices or sought for leave from this Court as this has not been done. The petitioner is directed to pay the necessary Court Fees with the Registry. Registry will issue certified copy to the petitioner for the purpose of filing of the appeal only of payment of the necessary Court fee.

27. Registry is directed to not to admit any appeal against this order if the petitioner fails to pay the necessary Court fee challenging the notices dated 08.05.2019 and 29.05.2019 issued to the petitioner. Similarly, petitioner shall pay separate Court fee for each of the notices dated 08.05.2019 and 29.05.2019 and impugned orders dated 23.12.2019.

28. The Writ Petition stands dismissed with the above observations. No cost. Consequently, connected miscellaneous petitions are closed.



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