IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2024

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.Nos. 897, 898, 899, 900, 901, 902, 903, 904, 906 of 2024
and
C.M.P.Nos.6288, 6290, 6295, 6296, 6297, 6298, 6300, 6301, 6302, 6303, 6304, 6305, 6306, 6309, 6310, 6319, 6320 of 2024

W.A.No.897 of 2024

M/s J.A.Motor Sport,
Rep. by its Proprietor J.Anand,
No.69-A, Aerodrome Road,
Singanallur,
Coimbatore. ... Appellant

v.

1.The Assistant Commissioner (ST),
Singanallur North Circle,
Coimbatore.

2.The State Tax Officer (Enforcement),
Group III, Coimbatore.

3.The Deputy Commissioner of Central Excise,
Coimbatore III Division (Service Tax Cell),
No.1237, Trichy Road,
Coimbatore 641 018.

4.The Commercial Tax Officer,
(Enforcement) Group – III, Coimbatore. ... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order of the learned Judge dated 20.07.2023 passed in W.P.No.8104 of 2020 for the assessment year TIN:2010-11.

For Appellant in all appeals : Mr.R.L.Ramani, Senior Advocate for Mr.B.Raveendran

For Respondents in all appeals : Mr.M.Venkateswaran for R1, R2, R4 Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by MOHAMMED SHAFFIQ,J.)

The present writ appeals have been filed challenging the order of the learned Judge, whereby the impugned orders of assessment for the assessment years 2007-08 to 2015-16 were quashed and the matters were remitted to the 4th Respondent to pass speaking orders afresh as directed by this Court in W.P.Nos.35694 to 35702 of 2016, in the earlier round of litigations, while also finding that if notices are issued under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "TNVAT Act"), the same shall be construed to be in time considering the fact that the appellant had been before this Court since 2016.

2. The Appellant is engaged in the business of manufacture and sale of Sports Cars and their service and maintenance. They also have an

engine testing centre and have a number of “Engine Test Beds” housed in special civil structure permanently embedded to the earth. The appellant had obtained registration under the Finance Act, 1994. They were discharging Service Tax on renting of “Engine Test Beds”, treating the same as immovable property.

3. There was an audit inspection conducted by the Enforcement Wing Authorities at the appellant's place of business between 23.11.2015 and 29.12.2015. During the course of the same, the appellant produced books of accounts and explained the leasing and renting of “Engine Test Beds”, while submitting that it was outside the purview of the TNVAT Act, inasmuch as the “Engine Test Beds” were immovable properties. The Enforcement Wing Authorities were, however, of the view that the leasing and renting out of Engine Test Beds / machineries were liable to VAT. A statement was recorded on 31.12.2015. It may also be relevant to note that certain other defects were noticed during the inspection, such as, short levy of tax from machinery sales, ITC availed without furnishing of 'C' Declaration forms, mismatch of ITC between the appellant's claim and the other end dealer, sale of assets, etc.

4. Pursuant to the above report, notices dated 02.06.2016 came to be issued by the Assistant Commissioner i.e, the 1st Respondent herein on the basis of the alleged defects noticed during the said inspection. We do not propose to get into details of the various defects, for, that may not be relevant for the purpose of deciding the issues raised in the present writ appeals.

5. The appellant approached this Court by way of writ petitions in W.P.Nos.35694 to 35702 of 2016 challenging the notices dated 02.06.2016 for the assessment years from 2007-08 to 2015-16. The challenge was on the premise that during the course of inspection, a statement was recorded from the Manager (Accounts) of the appellant on 31.12.2015, wherein, he had stated that he would file a reply to the defects along with correct and complete details of accounts before the assessing authority concerned. Thereafter, the appellant had clarified the defects pointed out by the authorities *vide* communication dated 08.02.2016, a copy of which was also sent to the Deputy Commissioner of Commercial Taxes (Enforcement), Coimbatore, and the Joint Commissioner of Commercial Taxes (Enforcement), Coimbatore.

6. By order dated 07.10.2016, the learned Judge disposed of the writ petitions, after having found that the impugned notices dated

02.06.2016 suffered from the vice of pre-determination and proceeded to set aside the same, while directing the Commercial Tax Officer (Enforcement), Group III, Coimbatore, to consider the appellant's objections / clarifications dated 08.02.2016 and to afford an opportunity of personal hearing and consider the documents and thereafter, give a reply (submit report) after recording the reasons. The above exercise was directed to be completed within a period of 8 weeks from the date of receipt of a copy of the order of the learned Judge. The assessing authority was also directed not to initiate any coercive proceedings until then. The Commercial Tax Officer (Enforcement) Group III, Coimbatore, was not a party to the writ petitions and was *suo motu* impleaded as 5th Respondent in the said writ proceedings.

7. Pursuant thereto, the Commercial Tax Officer (Enforcement) Group-III, Coimbatore, issued summons in Form PP dated 31.01.2018 calling upon the appellant herein to produce the documents relating to the assessment years from 2007-08 to 2015-16. In response, the appellant submitted their reply dated 12.02.2018, wherein, reliance was sought to be placed on the order of the learned Judge, in which, while disposing of the writ petitions in W.P.Nos.35694 to 35702 of 2016, the learned Judge directed the 5th Respondent therein to consider the objections / clarifications of the appellant herein and after affording an opportunity to the appellant

herein, to give reply (submit report) within a period of 8 weeks from the date of receipt of a copy of the order of the learned Judge dated 07.10.2016. A copy of the said order was made ready on 08.11.2016. However, the summons in Form PP dated 31.01.2018 being beyond the period stipulated by this Court, it was submitted that the proceedings of the Respondent were unsustainable. Thereafter, the 1st Respondent herein issued notice dated 15.03.2018 wherein it was stated that the delay in issuing the summons in Form PP was only in view of the fact that the 5th Respondent in those writ petitions, who was *suo motu* impleaded, was unaware of the writ petitions filed nor of the order passed thereon. It was further stated that the objections dated 08.02.2016 were not received by the 1st Respondent herein and in any view, the 1st Respondent directed the appellant to appear in person while granting an opportunity of personal hearing to put forth their case. The appellant, *vide* reply dated 24.03.2018, reiterated their objections stating that the learned Judge, in W.P.Nos.35694 to 35702 of 2016, had directed the Commercial Tax Officer (Enforcement) Group III, Coimbatore to consider the appellant's objections and give reply (submit report) within a period of 8 weeks from the date of receipt of a copy of the said order; that, the summons in Form PP dated 31.01.2018 by the 4th Respondent herein and the notice dated 15.03.2018 by the 1st Respondent herein having been issued, after the period stipulated in the order of the learned Judge, are impermissible and would constitute contempt. Thereafter, the impugned orders of assessment dated 28.02.2020 were passed by the 1st Respondent confirming the proposals. It is this matter which was the subject matter of challenge before the learned Judge in W.P.Nos.8099, 8102 to 8105, 8107, 8110, 8115 and 8116 of 2020. The learned Judge had disposed of the said writ petitions with the following directions:

> *"6.In view of the above observations, the impugned orders are quashed and the case is remitted back to the Commercial Tax Officer (Enforcement wing) Group III, Coimbatore to pass a speaking order on the appellant's representation as was ordered by this Court on 07.10.2016 in W.P.No.35694 to 35702 of 2016. Considering the fact that the appellant has not impleaded the aforesaid Officer as respondent in these Writ Petitions, the said officer namely The Commercial Tax Officer (Enforcement), Group III, Coimbatore, is suo motu impleaded. The concerned Officer namely the 4 th respondent shall pass appropriate order preferably within a period of 8 weeks from the date of receipt of copy of this order. Such order shall be passed, after considering the appellant's objections/clarifications dated 08.02.2016 and affording an opportunity of hearing to the appellant. Thereafter, the respondent/Jurisdiction Assistant Commissioner/ Sales Tax Officer may issue notice under Section 27 of the TNVAT Act.*
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> *7. It is made clear, if notices are issued under Section 27 of the TNVAT Act, 2006, they shall be construed to be in time, considering the fact that the appellant has been before this Court since 2016. Thus the time spent in prosecuting these writ petitions in both the rounds shall stand excluded for the purpose of computation of Limitation under Section 27 of the TNVAT Act."*

8. Aggrieved by the order of the learned Judge, the writ petitioner is before this court by way of these appeals.

9. The learned counsel appearing for the appellant preferred these appeals, primarily on the premise that the entire proceedings are contrary to the orders in W.P.Nos.35694 to 35702 of 2016, whereby, the 4th Respondent was directed to consider the appellant's objections dated 08.02.2016 after affording an opportunity of personal hearing to the appellant and thereafter pass orders within a period of 8 weeks from the date of receipt of a copy of the said order. That apart, the appellant has also challenged the observations of the learned Judge that the time spent in prosecuting the writ petitions in both the rounds of litigation, shall stand excluded, while reckoning the limitation under Section 27 of the TNVAT Act. It was thus submitted that the observation relating to exclusion of time under Section 27 of the TNVAT Act, while reckoning limitation is erroneous.

10. The learned Special Government Pleader appearing for the respondents would, however, submit that the order of the learned Judge does not suffer from any infirmity warranting interference by this court.

11. Heard both sides. Perused the material on record.

12. The attempt by the appellant to suggest that the order dated 20.07.2023 passed in W.P.Nos.8099, 8102 to 8105, 8107, 8110, 8115 and 8116 of 2020, whereby the 4th respondent was directed to complete the

process of granting personal hearing and give reply (submit report) by considering the appellant's objections / clarifications dated 08.02.2016 within a period of 8 weeks, is mandatory and failure to comply with the same, would result in losing the authority / jurisdiction to make assessment, is untenable. It is no doubt true that the learned Judge had directed to complete the process of granting personal hearing and to give reply (submit report) within a period of 8 weeks from the date of receipt of a copy of the order. However, the above direction of the learned Judge cannot be understood as resulting in curtailing the authority to frame assessment within the time stipulated under the TNVAT Act. In this regard, it may be relevant to note that Section 27 of the TNVAT Act, which provides for framing of assessment in respect of escaped turnover and reversal of input tax credit by the assessing authority, enables exercise of power under Section 27 of the TNVAT Act within a period of 6 years from the date of assessment.

13. In the present case, it is stated that there were no orders of assessment for the assessment years from 2007-08 to 2015-16. In the absence of orders of assessment, the deeming provision contained in Section 22(2) of the TNVAT Act would get attracted and resultantly, the assessment shall be deemed to have been assessed on 30.06.2012 for the assessment years from 2007-08 to 2010-11 and for the assessment years from 2011-12 to

2015-16, the assessment shall be deemed to be made on 31st of October of the succeeding years. The limitation under Section 27 of the TNVAT Act would expire six years from the above dates of deemed assessment under Section 22 of the Act. The contention of the appellant that the impugned orders of assessment are bad in law only by reason of the fact that the assessment proceedings pursuant to the order dated 07.10.2016 passed in W.P.Nos.35694 to 35702 of 2016 were initiated after the period stipulated in the same, is impermissible, for, it results in abridging / reducing the time limit provided under Section 27 of the TNVAT Act. The order of the learned Judge cannot be understood to curtail the power of assessment conferred on the assessing authority under Section 27 of the TNVAT Act. Any attempt to do so would result in understanding the judgment as issuing directions contrary to the statute which is impermissible. [Refer: *Modern School v. Union of India and others, (2004) 5 SCC 583, Sushil Kumar Singhal v. Regional Manager, Punjab National Bank (2010) 8 SCC 573, Union of India and another v. Kirloskar Pneumatic Co. Ltd., (1996) 4 SCC 453, Municipal Corporation of Delhi v. Gurnam Kaur (1989) 1 SCC 101, Common cause, a registered Society v. Union of India and others (1999) 6 SCC 667].*

14. It is also well settled that if a doubtful expression occurs in a judgment, apparently, by mistake or inadvertence, it ought to be read by assuming that the Court had intended to say only that which is correct according to settled position of law and the apparent error should be ignored and also no capital should be made out of it. [Refer: *Union Carbide Corporation and others. v. Union of India and others (1991) 4 SCC 584, State of West Bengal v. Kesoram Industries Ltd., and others (2004) 10 SCC 201].*

15. If we keep the above principle in mind, the period of 8 weeks which was stipulated by the learned Judge, must be understood as "preferably within a period of 8 weeks", else the direction of the learned Judge in W.P.Nos.35694 to 35702 of 2016 itself would be contrary to the provision of the TNVAT Act, an interpretation, which ought to be avoided. Thus, the above contention of the appellant ought to be rejected. Section 27 of the TNVAT Act, while prescribing limitation, also provides exclusion of time spent in certain proceedings in terms of sub Sections (6), (7) and (8) to Section 27 of the TNVAT Act.

16. It has been observed by the learned Judge that the time spent in the present and earlier batch of writ petitions viz., W.P.Nos.35694 to 35702

of 2016 shall stand excluded for the purpose of limitation under Section 27 of the TNVAT Act, while remitting the cases to the Commercial Tax Officer (Enforcement) Group III, Coimbatore, to pass appropriate orders preferably within a period of 8 weeks from the date of receipt of a copy of the order; such order shall be passed after considering the appellant's objections/clarifications dated 08.02.2016 and affording an opportunity of hearing to the appellant; and thereafter, the respondent/ Jurisdictional Assistant Commissioner/ Sales Tax Officer may issue notice under Section 27 of the TNVAT Act.

17. As the assessment has already been remitted, we are inclined to set aside the observation of the learned Judge relating to exclusion of time in terms of Section 27 of the TNVAT Act, leaving it open to the appellant to raise the issue of limitation, including exclusion of time spent in the writ proceedings, while reckoning limitation under Section 27 of the TNVAT Act. If the above aspect is raised by the appellant, the respondent shall consider and decide the same in accordance with law.

18. In fine, the order of the learned Judge, which is impugned herein, remains undisturbed except to the extent as indicated above.

Accordingly, all the writ appeals stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D.,J.] [M.S.Q,J.]
18.03.2024

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation : Yes/ No
shk/mka

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