IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.08.2023

PRONOUNCED ON : 19.02.2024

CORAM

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

W.P.Nos.17289, 17291, 17295 & 17297 of 2021
and WMP.Nos.18311, 18312, 18313 & 18316 of 2021

R.Vijayalakshmi ... Petitioner in all W.Ps.

vs.

The Assistant Commissioner (ST),
Kuniyamuthur Assessment Circle,
Coimbatore-18. .. Respondent in all W.Ps.

Prayer in W.P.No.17289 of 2021 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records on the file of the respondent in TIN : 33661803589/2008-09 dated 15.07.2021 and quash the same.

Prayer in W.P.No.17291 of 2021 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records on the file of the respondent in TIN : 33661803589/2009-10 dated 15.07.2021 and quash the same.

<u>Prayer in W.P.No.17295 of 2021</u> : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records on the file of the respondent in TIN : 33661803589/2010-11 dated 15.07.2021 and quash the same.

<u>Prayer in W.P.No.17297 of 2021</u> : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records on the file of the respondent in TIN : 33661803589/2011-12 dated 15.07.2021 and quash the same.

In all W.Ps.

For Petitioner : Mr.A.Chandrasekaran

For Respondent : Mrs.E.Ranganayaki
Spl.Govt.Pleader

<u>C O M M O N O R D E R</u>

The petitioner herein is the legal heir of Late Mr.S.Rajagopal, the Proprietor of "Tvl.Vijayalakshmi Exporters and Importers" who was a tax assesse with the respondent Commercial Tax Department under the provisions of Tamil Nadu Value Added Tax, 2006 (herein after called as "TNVAT Act, 2006".

2. It appears that based on a complaint and news reported in the newspaper, the Enforcement Wing inspected the business premises of Late Mr.S.Rajagopal and obtained statement on 12.05.2011. Based on the above, the Commercial Income Tax Department issued a notice for the Assessment Year 2008-09 on 31.12.2018, 20.06.2019 and 15.11.2019.

3. Meanwhile, the Proprietor of "Tvl.Vijayalakshmi Exporters and Importers", Mr.S.Rajagopal died on 03.03.2020. The Department has thereafter issued a Statutory Notice for the Assessment Year 2008-09 to 2011-12 on 29.07.2020.

4. The petitioner who is the W/o.Late Mr.S.Rajagopal, Proprietor of the "Tvl.Vijayalakshmi Exporters and Importers/dealer replied that her husband, Late Mr.S.Rajagopal, the Proprietor of "Tvl.Vijayalakshmi Exporters and Importers"the assesse had died on 03.03.2020. In the said reply it was stated that the business carried by Late Mr.S.Rajagopal has been closed and that the invocation of machineries under the provisions of TNVAT Act. 2006 were beyond the period of limitation under Section 27 of TNVAT Act, 2006.

5.That apart, it was submitted that Late S.Rajagopal along with two others were also accused in C.C.No.50 of 2013 and that by an order dated 08.08.2018, the learned Judicial Magistrate-IV, Coimbatore, acquitted them. The above Criminal case was filed against Late Mr.S.Rajagopal, Proprietor of "Tvl.Vijayalakshmi Exporters and Importers" and two others under Section 7(i)(a) and (ii) of Essential Commodities Act, 1953.

6. The specific case of the petitioner is that in view of 5th Amendment of Act 23/2012 with effect from 19.06.2012, there was a "deemed assessment" within the meaning of Section 22(2) of TNVAT, 2006 and therefore, the last date for reopening the assessment under Section 27 TNVAT, 2006 would have expired for the Assessment Year 2008-09 to 2010-11 on or before 30.06.2018.

7. Similarly, it is submitted that for the assessment year 2011-12 the last date for reopening the assessment under Section 27 TNVAT, 2006 on or before 31.10.2018, whereas, the notices which preceeded the impugned assessment orders dated 15.07.2021 were issued only on 29.07.2020 followed by another

notice in the name of the petitioner as legal heirs of the deceased assesse Late Mr.S.Rajagopal, the proprietor of "Tvl.Vijayalakshmi Exporters and Importers" on 28.11.2020 for the respective Assessment Years.

8. Learned counsel for the petitioner submits that the very basis of the conclusion that the assesse had failed to file complete return or had filed incorrect return stands rebutted from the newspaper cutting reported in the Hindu on 12.05.2011 purusant to which statement were recorded. It is submitted that even on merits the above stand can no longer be countenanced in view of the order passed by the Judicial Magistrate-IV, Coimbatore in C.C.No.50 of 2018 on 08.08.2018.

9. It is submitted that even if it is assumed that there was no “deemed assessment”, proceedings for reopening the assessment should have been made within a reasonable period of time and not after a lapse of more than 10 years for the relevant Assessment Years in 2020.

10. In this connection, learned counsel for the petitioner has placed his reliance on the decision of the Hon'ble Supreme Court in **Bharathi Steel Tubes Lted vs. State of Haryana** 1988 (3) SCC 478.

11. It is submitted that there is no scope for concluding that the deceased assesse the proprietor of "Tvl.Vijayalakshmi Exporters and Importers" had either filed incorrect returns or incomplete returns or had failed to file monthly returns as is contemplated under Section 21 TNVAT Act, 2006 read with Rule 7 of the TNVAT Rules 2007.

12. Hence, the learned counsel for the petitioner would submit that the impugned orders have to go as having been passed without jurisdiction.

13. The learned counsel for the petitioner has also placed reliance on decision of a learned Single Judge of this Court rendered on 27.10.2022 in **W.P.(MD).No.14494 of 2021.**

14. The learned Special Government Pleadedr for the respondent on the other hand would submit that it is incorrect to state that notices were issued only on 29.07.2020 for the first time. The learned counsel for the respondent has produced copies of notices that were issued for the Assessment Year 2008-09 on 31.12.2018, 15.11.2019 and 29.07.2020 and it is only thereafter, notice dated 29.07.2020 and 28.11.2020 were issued.

15. It is submitted that notices were also served on Late Mr. S.Rajagopal during his lifetime which was also acknowledged, as is evident from the acknowledgment card which is filed before this Court.

16. It is submitted that since incorrect returns were filed by the assesse, the question of assessment being deemed to have been completed under Section 22(2) in accordance with the amendment provision of Section 22(4) with effect from 19.06.2012 for not complying cannot be countenanced.

17. It is submitted that in view of Sub Section (4) to Section 22 of TNVAT Act, 2006, the limitation under Section 27 will apply only after either where an assessment is deemed to have been completed earlier or when assessment is complied. In this case, the question of assessment being deemed to have been completed does not arise as the assesse had given incorrect returns under Section 21 of TNVAT Act, 2006provisions of the Act. That apart, the learned counsel for the respondent would submit that for the following period the assesse had also not filed monthly returns.

18. The learned Special Government Pleader for the respondent would submit refers to para 11 of the counter affidavit, reads as under:-

> 11. With regard to the averments made in para 7 of the affidavit, it is submitted that the dealer who carried on business had not filed returns as below:-

Year	Months for which monthly returns not filed
2008-09	April 2008 to August 2008
2009-10	April 2009
2010-11	November 2010 & January 2011

> The assessment orders were passed under Section 22(4) of the TNVAT Act, 2006. The time limit prescribed is not applicable to fresh assessment. As per Section 22(2) of TNVAT Act, 2006, the deemed assessment is eligible only for the dealers who have furnished correct and complete return with prescribed documents and proof of payment of tax. On scrutiny of the returns with reference to the books of account, Tvl. Sri Vijayalakshmi Exporters and Importers have not reported the actual sales turnover in the monthly return and it is construed that the dealer had filed incomplete or incorrect return for the years 2008-09 to 2010-11. Hence, the dealers are not eligible for deemed assessment as per Section 22(2) of TNVAT Act, 2006. Section 27 referred by the legal heir is applicable only to the assessments pertaining to suppressed turnover. Moreover, the officers of this Enforcement Wing furnished copy of the statement recorded at the time of inspection of the business place of the dealer".

19. That apart, it is submitted that although, the petitioner had called for information, no such request was received and therefore based on the available materials, the impugned order was passed.

20. In any event, the learned counsel for the respondent submitted that petitioner can be religated to file a Statutory appeal before the Appellate Commissioner. Hence, he prayed for dismissal of the Writ Petition.

21. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Special Government Pleader for the respondent. I have also considered the case laws submitted by the learned counsel for the petitioner. There is no justification in the challenge to the impugned assessment order on the ground of limitation under section 27 of the Tamil Nadu Value Added Tax Act, 2006.

22. The limitation under section 27 of the Tamil Nadu Value Added Tax Act, 2006 will apply only in case where there is an escaped assessment after an assessment order was passed earlier where there is a deemed assessment under Section 22 of the Tamil Nadu Value Added Tax Act, 2006.

23. If the returns filed by the dealer under Section 21 of the Tamil Nadu Value Added Tax Act, 2006 read with rule 7 of theTamil Nadu Value Added Tax Act, 2007 were either incorrect or incomplete without the prescribed documents and proof of payment of tax, question of the assessment being treated as deemed to have been completed in terms of the amendment to Section 22 of

theTamil Nadu Value Added Tax Act, 2006 vide Tamil Nadu Act 23 of 2012 with effect from 19.6.2012 on the date specified in sub-section 2 to section 22 of theTamil Nadu Value Added Tax Act, 2006 on 31.10.2018 and on 13.6.2012 for the assessment years 2006-7 to 2010-11 rule 8 (9) and rule 8 (10) would not arise read with Rule 8(10) of the Tamil Nadu Value Added Tax Rules, 2007. Only where an assessee has filed the return in the prescribed form which were accompanied with prescribed documents and proof of payment of tax, assessment can be deemed to be completed. As per rule 8 (9) of Tamil Nadu Value Added Tax Rules, 2007, only where a registered dealer is deemed to have been assessed under the Act, 2006, assessing authority is not required to issue any assessment order or intimation to the dealer.

24. If no returns were filed or where the returns filed were incomplete or incorrect, under section 22 (4) oftheTamil Nadu Value Added Tax Act, 2006, the Assessing Authority has to assess the dealer to the best of its judgement after the completion of that year.

25. As per section 25 of the Tamil Nadu Value Added Tax Act, 2006, where a dealer fails to file returns of files and incomplete written or where the returns filed is incorrect, the Assessing Authority has to determine provisionally the tax payable by the dealer to the best of its judgement. Section 22 (4) and Section 25 of the Tamil Nadu Value Added Tax Act, 2006 are reproduced below: -

Section 22 of of the Tamil Nadu Value Added Tax Act, 2006	25 of the Tamil Nadu Value Added Tax Act, 2006
22.[Deemed Assessment and] procedure to be followed by the assessing authority. - (1) The assessment in respect of the dealer shall be on the basis of return relating to his turnover submitted in the prescribed manner within the prescribed period . (2)The assessing authority shall accept the returns submitted for the year, by the dealer, if the returns are in the prescribed form and accompanied with the prescribed documents and proof of payment of tax. Every such dealer shall be deemed to have been assessed for the year on the 31st day of October of the succeeding year - Provided that in respect of such returns submitted for the years 2006-	25. Procedure to be followed in assessment of certain cases.--- (1) 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 be assessing authority to be incomplete or incorrect, the assessing authority may, after making such enquires as it considers necessary, determined provisionally the 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

Section 22 of of the Tamil Nadu Value Added Tax Act, 2006	25 of the Tamil Nadu Value Added Tax Act, 2006
2007, 2007-2008, 2008- 2009, 2009-2010 and 2010-2011, on which assessment order are not passed shall be deemed to have been assessed on the 30th day of June 2012. Prior to the Amendment made by the Fifth Amendment Act 23 of 2012, notified by GO.No.82. as effective from 19th June2012, this sub-section was as under :- (2) The assessing authority shall accept the returns submitted for the year, by the dealer, if the returns are accompanied by the proof of payment of tax and the documents prescribed, and on such acceptance, the assessing authority shall pass an assessment order. (3)Notwithstanding anything contained in sub-section (2), not exceeding twenty per cent of the total number of such assessments shall be selected by the Commissioner in such manner as may be prescribed for the purpose of detailed scrutiny regarding the correctness of the returns submitted by the dealer and in such cases, revision of assessment shall be made, wherever necessary. [(3-A)Notwithstanding anything contained in sub-section (2), the casual traders and the dealers in respect of whom the relevant	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.

Section 22 of of the Tamil Nadu Value Added Tax Act, 2006	25 of the Tamil Nadu Value Added Tax Act, 2006
assessment year is the first or the last year of business, shall be assessed on the basis of the scrutiny of the returns with reference to the books of accounts, registers, records and any other document and on such enquiry as the assessing authority may consider necessary".] [(4) If no return is submitted by the dealer for any period of the year or if the return filed is in complete or incorrect, or if not accompanied with any of the documents prescribed or proof of payments of tax, the assessing authority shall, after making such enquiries 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. 5) In addition to the tax assessed under sub-section (4), the assessing authority shall, in the order of assessment passed under sub-section (4) or by a separate order, direct the dealer to pay by way of penalty, a sum which shall be, one hundred and fifty percent of the difference of the tax assessed and the tax already paid as per the returns:	

Section 22 of of the Tamil Nadu Value Added Tax Act, 2006	25 of the Tamil Nadu Value Added Tax Act, 2006
Provided that no penalty under this sub-section shall be imposed after the period of six years from the date of assessment order * unless the dealer affected has had a reasonable opportunity of showing cause against such imposition. *Explanation*.- For the purpose of levy of penalty under this sub-section, the tax assessed on the following kinds of turnover shall be deducted from the tax assessed under sub-section (4):- (i) Any turnover representing additions to the turnover as per the returns made by the assessing authority without reference to any specific concealment of turnover; (ii) Any turnover estimated by the assessing authority with reference to any specific concealment of turnover as per the returns; (iii) Any turnover estimated by the assessing authority with reference to any specific concealment of turnover as per the returns;	

26. Whether the returns filed were incomplete or incorrect can be determined only by the Assessing Officer. Therefore, there cannot be a

determination of the disputed facts in a summary proceedings before this Court under Article 226 of the Constitution of India. The limitation under section 27 of the Tamil Nadu Value Added Tax Act, 2006 will apply only where there is a deemed assessment strictly in accordance with section 22 (2) of the Tamil NaduValue Added Tax Act, 2006.

27. Therefore, there is no merits in these present writ petitions. They are therefore liable to be dismissed. Accordingly, these writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

19.02.2024

Index : Yes/No
Neutral Citation : Yes/No
kkd
To

The Assistant Commissioner (ST),
Kuniyamuthur Assessment Circle,
Coimbatore-18.

C.SARAVANAN, J.

kkd

Pre-delivery Common Order in
W.PNos.17289, 17291,
17295 & 17297 of 2021

19.02.2024