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W.P.Nos.16891 & 16895 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2024

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Writ Petition Nos.16891& 16895 of 2020
and W.M.P.Nos.20955 & 20962 of 2020

In both WPs.

Tvl. National Switchgears,
Represented by its Proprietor,
38, SIDCO Industrial Estate,
Ambattur, Chennai-98.

... Petitioner

-VS-

Commercial Tax Officer,
Pattaravakkam Assessment Circle,
No.127, Yadavlal Street,
Padi, Chennai-50.

... Respondent

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the respondent's assessment orders dated 27.03.2019 in CST/52542/2006-2007 & CST/52542/2007-2008 and quash the same.



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W.P.Nos.16891 & 16895 of 2020

In both WPs.

For Petitioner : Mr.M.Velmurugan,
Ms.Girija Velmurugan

For Respondent : Mrs.E.Ranganayaki, AGP(T)

COMMON ORDER

In these two writ petitions, the petitioner assails two separate assessment orders dated 27.03.2019 in respect of assessment years 2006-2007 and 2007-2008, respectively.

2. The challenge is on the basis that the assessment proceedings are barred by limitation. The petitioner submits that his father was previously carrying on the business and that the petitioner took over the business upon the demise of his father. As regards assessment year 2006-2007, the petitioner asserts that he became aware of the proceedings only upon receipt of impugned order dated 27.03.2019. Learned counsel for the petitioner referred to Section 27(2) of the Tamil Nadu Value Added Tax Act, 2016 (the TNVAT Act) to contend that it prescribes a limitation period of six years, which is to be computed from the date of assessment. By turning to



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sub-section (2) of Section 22 of the TNVAT Act, learned counsel submits that the assessment was deemed to have taken place on 30.06.2012 both in respect of assessment years 2006-2007 and 2007-2008. Therefore, learned counsel contends that any proceedings, whether initiated under sub-section (4) of Section 22 or sub-section (2) of Section 27, should be taken within six years from the date of deemed assessment. If computed from 30.06.2012, learned counsel contends that the impugned orders issued on 27.03.2019 are barred by limitation.

3. With specific reference to the assessment order for assessment year 2007-2008, learned counsel submits that the assessment order does not refer to any notices issued prior to such assessment. In the absence of prior notice to the assessee, learned counsel submits that the assessment order contravenes the prescription in sub-section (4) of Section 22. Hence, learned counsel submits that the impugned assessment orders are liable to be quashed.

4. In response to these submissions, learned counsel for the



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respondent submits that a pre-assessment notice dated 19.11.2012 was issued in respect of assessment year 2006-2007. By referring to the endorsement on such notice, it is contended that the notice was received by the petitioner on 06.12.2012. Learned counsel contends that this notice was issued before expiry of the six year limitation period computed from 30.06.2012.

5. As regards the assessment for assessment year 2007-2008, learned counsel relied on the assessment order dated 16.10.2012. Since such assessment order was issued within the period of limitation, it is submitted that the assessment proceedings are not barred by limitation. Learned counsel also referred to the revised assessment order issued for assessment year 2007-2008 on 27.03.2019. With reference thereto, it is contended that the assessment was revised pursuant to the submission of C Forms by the petitioner.

6. As regards both these assessment years, learned counsel for the



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respondent also submits that proceedings were initiated under sub-section (4) of Section 22 and not under sub-section (2) of Section 27 because the returns filed by the petitioner were incomplete.

7. The question that falls for consideration on the basis of the above contentions is whether the proceedings in respect of these two assessment years are barred by limitation. Section 9(2) of the Central Sales Tax Act, 1956 makes the provisions of the relevant state sales tax law applicable to proceedings for assessment, reassessment, recovery and enforcement. Therefore, the provisions of the TNVAT Act become applicable. Section 27 of the TNVAT Act enables the Tax Department to undertake reassessment in respect of escaped assessment of tax provided such reassessment is undertaken within six years from the date of assessment. Sub-section (2) of Section 22 of the TNVAT Act provides for deemed assessment. The proviso thereto prescribes that assessment shall be deemed to have taken place on 30.06.2012 with regard to specific assessment years, including assessment years 2006-2007 and 2007-2008, with which we are concerned.

8. In this case, the position taken by the respondent is that



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proceedings were initiated under sub-section (4) of Section 22 and not under sub-section (2) of Section 27. It should be noticed that no period of limitation is prescribed in sub-section (4) of Section 22. However, *by order dated 27.06.2023, in a batch of writ petitions in W.P.No.28896 of 2019 batch in M/s.KAG India Pvt. Ltd. v. the Assistant Commissioner (St)*, this Court held that the limitation period prescribed in sub-section (2) of Section 27 would also apply to proceedings initiated under sub-section (4) of Section 22. Therefore, the question of limitation should be determined on the basis that the limitation period is six years from the date of assessment.

9. As regards assessment year 2006-2007, the respondent relies on pre-assessment notice dated 19.11.2012. Although the pre-assessment notice bears an endorsement, on the basis of the said endorsement, it is not possible to ascertain as to who acknowledged receipt. The said endorsement does not contain the name of the person who purportedly acknowledged receipt or bear the rubber stamp of the petitioner. It should also be noticed that the reminder notice dated 12.07.2018, which appears to be the next notice for the relevant assessment year, was issued after the period of



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limitation expired in June 2018. On the basis of documents placed on record in these proceedings and in view of the petitioner's assertion that he did not receive notice dated 19.11.2012, I conclude that proceedings relating to assessment year 2006-2007 have not been shown to be within the period of limitation prescribed by statute.

10. Turning to proceedings relating to assessment year 2007-2008, two assessment orders were relied on by the respondent. The first of these is dated 16.10.2012. The assessment order bears an endorsement that it was sent on 12.02.2013. No proof of receipt of the assessment order by the petitioner is on record. A subsequent assessment order dated 27.03.2019 for the same assessment year is also on record. The order impugned in W.P.No.16913 of 2020 is the later order. Conspicuous by its absence in order dated 27.03.2019 is reference to any notice issued prior to the issuance of the assessment order. Although learned counsel for the respondent contended that the petitioner did not plead that the assessment order was not preceded by a show cause notice, while determining the validity of such assessment order, the question as to whether the assessee was provided a



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reasonable opportunity should necessarily be examined. In any event, in the absence of any evidence that the assessee received assessment order dated 16.10.2012 and in the absence of proof of service of any notices within the limitation period of six years computed from 30.06.2012, the assessment order for assessment year 2007-2008 also warrants interference.

11. For reasons set out above, the orders impugned in W.P.Nos.16891 & 16895 of 2020 are quashed and the writ petitions are allowed without any order as to costs. Consequently, connected miscellaneous petitions are closed.

23.01.2024
(2/2)

Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

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SENTHILKUMAR RAMAMOORTHY,J

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To
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