IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.01.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.30305 of 2022
and W.M.P.No.29748 of 2022

M/s.E.H.223 Sri Thirumaghal Powerloom Weavers,
Co-op. Production & Sales Society Limited,
(Formerly known as)
M/s.Chennimalai Thalapathi Powerloom
Weavers Co-op. Production Sale Society Ltd.,
Represented by its President, No.14,
Pandian street, Chennimalai-638 051. ... Petitioner

-vs-

State Tax Officer,
Chennimalai Circle,
Perundurai. ...
Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus calling for the records of the respondent in TIN 33172924063/2013-2014 dated 05.10.2021 and quashing the impugned assessment proceedings for the year 2013-2014 and directing the respondent to pass fresh orders by following the circular instructions of the Commissioner of Commercial Taxes in Circular No.5 of 2021 (LW10/12521/2016) dated 24.02.2021 after giving an opportunity of personal hearing to the petitioner and pass orders as per the provisions of the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner : Mr.K.Baktha Siromoni

For Respondent : Mr.V.Prasanth Kiran, Government Advocate(T)

ORDER

The petitioner challenges an assessment order dated 05.10.2021 in respect of assessment year 2013-2014.

2. This writ petition was filed by the Co-operative Society engaged in activities for the welfare of weavers. The assessment order is impugned on three grounds. The first ground of challenge is that the assessment order was issued on 05.10.2021, which is beyond the period of six years within which proceedings may be initiated either under sub-section (4) of Section 22 or under sub-section (2) of Section 27 of the Tamil Nadu Value Added Tax Act, 2006 (the TNVAT Act). The second ground of challenge was that the assessment order was issued on the basis of mismatch between the

returns filed by the petitioner and those filed by the dealers with whom the petitioner had dealings. As regards such mismatch, it was contended on behalf of the petitioner that returns for assessment year 2013-2014 were permitted to be filed manually. According to learned counsel for the petitioner, Circular No.5/2021 (LW10/12521/2016), dated 24.02.2021 (Circular No.5), which was issued by the Commissioner of Commercial Taxes, specifies that action with regard to mismatching should not be taken in respect of assessment years up to 2013-2014. By pointing out that manual returns were filed by the petitioner, learned counsel contends that such returns cannot be matched with the digital returns filed by the dealers. The third contention was that the relevant particulars were not provided in the notice dated 24.10.2014. Learned counsel submits that details such as the invoice number and commodity code should have been provided as per Circular No.5. In the absence of such particulars, learned counsel contended that the petitioner did not have a reasonable opportunity to respond to the proposal made in notice dated 24.10.2014. He also relied upon the order of this Court dated *24.06.2022* in *W.P.Nos.7161, 7165 and 7170 of 2019, Subha Shree Hotels v. The Assistant Commissioner (ST), Coimbatore* and the *order dated 27.06.2022 in W.P.No.13618 of 2019, Sri Amman Sago Factory v. State Tax Officer, Namakkal*. Learned counsel concluded his submissions by contending that the impugned assessment order is liable to be quashed so as to provide the petitioner a reasonable opportunity both in terms of Circular No.5 and the orders of this Court.

3. In response to these contentions, Mr.V.Prasanth Kiran, learned Government Advocate, submitted as follows:

(i) His first contention was that the impugned order was issued on 05.10.2021, whereas the writ petition was filed in August 2022. The second contention was that the petitioner failed to avail the statutory remedy of filing an appeal. With reference to the notice dated 24.10.2014, learned counsel submitted that such notice was received by the President of the Co-operative Society on 10.02.2015, as evidenced by the endorsement on such notice. Likewise, he submitted that the personal hearing notice dated 26.12.2019 and the revised notice dated 16.03.2021 were received by the Co-operative Society through its Manager. Hence, he contended that principles of natural justice were complied with.

(ii) As regards the contention that the assessment is barred by limitation, learned counsel submitted that the notice dated 24.10.2014 was issued within the six year limitation period. By placing reliance on the judgment of the Hon'ble Supreme Court in the *Sales Tax Officer and another v. Messrs Sudarsanam Iyengar and Sons (Sudarsanam Iyengar), 1969 (2) SCC 396* and several other judgments, learned counsel submits that the initiation of proceedings within the limitation period would suffice and that it is not necessary that the assessment order should be issued within the period of limitation. For all these reasons, learned counsel submitted that no interference is warranted with the impugned order.

4. Upon considering the above submissions, at the outset, the preliminary objections of the petitioner are considered. The first preliminary objection was on the ground of laches. The impugned order was issued on 05.10.2021 and the writ petition appears to have been filed sometime in August 2022. The length of delay, in my view, is not such as to decline to entertain the writ petition on the ground of laches. As regards the objection on the ground of alternative remedy, the existence of an alternative remedy is

a material consideration while exercising discretionary jurisdiction, but it does not operate as a bar. The next aspect to be considered is limitation. The period of limitation either for proceedings under sub-section (2) of Section 27 of the TNVAT Act or proceedings under sub-section (4) of Section 22 thereof is six years from the date of assessment. As regards assessment year 2013-2014, assessment is deemed to have taken place on 31.10.2014 as per sub-section (2) of Section 22. Therefore, the six year period should be computed from such date. Admittedly, a notice was issued by the respondent on 24.10.2014. This notice bears the acknowledgment of the petitioner on 10.02.2015. Undoubtedly, the notice was issued within the limitation period. While learned counsel for the petitioner contended that the assessment order was issued on 05.10.2021, which is beyond the period of limitation, as correctly contended by learned counsel for the respondent, it is sufficient if proceedings for reassessment or best judgment assessment are initiated within the period of limitation. Reference may be made in this regard to the judgment in *Sudarsanam Iyengar* which was cited by learned counsel for the respondent.

5. On the merits of the matter, learned counsel for the petitioner contended that Circular No.5 mandates that proceedings should not be initiated in respect of mismatch for assessment years up to 2013-2014. On examining Circular No.5, I find that it is stated therein that revision up to assessment year 2014 would be barred by limitation unless notices were issued within the period of limitation. The said Circular does not state that no action should be taken in respect of mismatch for assessment year 2013-2014. Turning to the contention that particulars were not provided, learned counsel for the respondent countered this contention by pointing out that "Buyers TIN, Invoice Date and Purchase TO", were specified in notice dated 24.10.2014. On examining the said notice, the contention of learned counsel for the respondent is liable to be accepted. Moreover, upon receipt of the notice on 10.02.2015, if additional particulars were required, the petitioner could have requested for such particulars so as to respond to the notice. The documents on record disclose that personal hearing notices were also issued to the petitioner and the record also contains evidence of receipt thereof by the petitioner.

6. From the assessment order, it appears that the assessment was partly revised based on the returns filed by the petitioner pursuant to the notice dated 24.10.2014. In these circumstances, it cannot be said that principles of natural justice were violated or that necessary particulars were not provided to the petitioner.

7. For reasons set out above, the impugned order does not call for interference in exercise of discretionary jurisdiction. W.P.No.30305 of 2022 is, therefore, dismissed without any order as to costs. This order will not stand in the way of the petitioner presenting a statutory appeal. Consequently, connected miscellaneous petition is closed.

23.01.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No
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SENTHILKUMAR RAMAMOORTHY,J

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To

State Tax Officer,
Chennimalai Circle,
Perundurai.

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