IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.25911, 25914, 25915, 25918 and 25921 of 2021
and
W.M.P.Nos.27380, 27385, 28386, 27389 and 27393 of 2021

Tvl.Kalyan Jewellers,
No.171, Omalur Main Road,
Salem,
Rep by its Manager Bipin C.P. ... Petitioner in all W.Ps

Vs.

The Assistant Commissioner (ST),
Alagapuram Circle,
Salem. ... Respondent in all W.Ps

Prayer in W.P.No.25911 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the impugned notice in TIN No.33222844350/2009-10 dated 29.10.2021 from the files of the respondent herein, quash the same.

Prayer in W.P.No.25914 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the impugned notice in TIN No.33222844350/2010-11 dated 29.10.2021 from the files of the respondent herein, quash the same.

Prayer in W.P.No.25915 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the impugned notice in TIN No.33222844350/2011-12 dated 29.10.2021 from the files of the respondent herein, quash the same.

Prayer in W.P.No.25918 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the impugned notice in TIN No.33222844350/2012-13 dated 29.10.2021 from the files of the respondent herein, quash the same.

Prayer in W.P.No.25921 of 2021: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the impugned notice in TIN No.33222844350/2013-14 dated 29.10.2021 from the files of the respondent herein, quash the same.

For Petitioner : M/s.Aparna
(in all W.Ps)

For Respondent : Mr.C.Harsharaj
(in all W.Ps) Additional Government Pleader

COMMON ORDER

By this common order, all these writ petitions are being disposed of.

2. In these writ petitions, the petitioner has challenged the impugned notices all dated 29.10.2021 which preceded five other notices for these Assessment Years on 22.10.2020.

3. The petitioner had earlier been issued with Revision notices dated 17.04.2015 as Assessments were deemed to have been completed under Section 22 of the TNVAT Act, 2006. These re-assessment notices dated 17.04.2015 culminated in orders dated 30.11.2018 for the respective Assessment Years. These Assessment orders dated 30.11.2018 were however, put to challenge before this Court in

W.P.Nos.33874 of 2018 batch etc,.

4. Details in the notices dated 17.04.2015 and the order passed on 30.11.2018 are as follows :-

Sl.Nos	***Assessment Years***	***Date of Assessment Order***
1	2009-10	30/11/18
2	2010-11	30/11/18
3	2011-12	30/11/18
4	2012-13	30/11/18
5	2013-14	071218

5. The petitioner itself admitted the liability inrespect of Serial Nos.1, 3, 4 and 5 and disputed the liability at Serial Nos.2 and 6 namely ITC reversal on exempted sales and ITC reversal based on Annual Scrutiny Report. The Court by its order dated 19.12.2018 in W.P.Nos.33874 of 2018 batch etc,. had accepted the case of the petitioner and remitted the case back to the respondent to pass a fresh order with the following observations:-

> "*9.Though the Assessing Officer extracted the whole reply in the assessment orders, has however, not dealt with in detail with his independent reasoning and findings as to how those objections raised by the petitioner are not*

sustainable. On the other hand, the Assessing Officer, simply rejected the objections by stating that copies of purchase invoices were not filed by the petitioner. Moreover, as it is claimed by the petitioner that the petitioner cannot be faulted, if the other end dealers have not reported part of the sale effected to them and paid the tax thereon, especially, when the petitioners are having the purchase invoices, this Court is of the view that the Assessing Officer can consider the matter afresh, more particularly, under the circumstances that the assessment orders came to be passed, without hearing the petitioner, by the new Assessing Officer, since the earlier personal hearing given was by the previous officer.

10.Accordingly, these writ petitions are allowed and the impugned orders of assessment, in so far as those two issues are concerned, are set aside. Consequently, the matter is remitted back to the Assessing Officer to redo the assessment in respect of those two issues, after giving due opportunity of hearing to the petitioner. Such exercise shall be done by the Assessing Officer within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed."

6. It is in this background, fresh notices for each of the Assessment Years came to be issued as mentioned above. The first set of notices were issued on 22.10.2020 followed by the impugned notices dated 29.10.2021.

7. The learned counsel for the petitioner would submit that the

impugned exercise at this distant point of time are clearly time barred as there are contrary to the limitation prescribed under Section 27 of the TNVAT Act, 2006. In any event, it is submitted that there was categorical directions of this Court to re-do the assessment on the two issues, after giving due opportunity of hearing to the petitioner and on such exercise was to be done by the Assessing Officer within a period of six weeks from the date of receipt of the order dated 19.12.2018.

8. The learned counsel for the petitioner would submit that since the orders passed on 30.11.2018 were set aside by this Court vide its order dated 19.12.2018 in W.P.Nos.33874 of 2018 batch etc., the limitation to pass orders have also expired as the limitation has to be reckoned from the deemed date assessment under Section 22 of the TNVAT Act, 2006.

9. The arguments that the proposed exercise under Section 27 of the Act would be time barred, in view of the limitations under Section 27 of the Act read with Section 22 is not available as admittedly earlier Assessment orders came to be passed on 30.11.2018 for the respective

Assessment Years. These orders were put to challenge in W.P.Nos.33874 of 2018 batch etc., and were set aside for passing fresh order within the time stipulated therein. Such delay would not be fatal, at best, the respondent/Commercial Tax Department could have approached the Court for the Court to extend the limitation. The Jurisprudence developed in the context of service law cannot be imported in the context of taxing matters as no prejudice can be said to have been caused to the petitioner by the said delay.

10. The notices that came to be issued on 22.10.2020 and 29.10.2021 cannot be held to be time barred. At best, there can be technical breach of the limitation prescribed by the Writ Court vide its order dated 19.12.2018 in W.P.Nos.33874 of 2018 batch etc,. wherein, the petitioner had challenged the first round of order passed on 30.11.2018.

11. However, it would be improper on the part of the respondent to re-open the issues that were not subject matter of the notices issued on 17.04.2015 afresh in the light of the order passed by the Court in

W.P.Nos.33874 of 2018 batch etc,. vide order dated 19.12.2018.

12. Under these circumstances, these writ petitions are disposed of by directing the respondent to pass order pursuant to the impugned notices dated 29.10.2021 which preceded on 22.10.2020 notices as expeditiously as possible by confining to the issue only on ITC reversal on exempted sales and ITC reversal based on Annual Scrutiny Report.

13. The disputes pertains to the Assessment Years 2009-2010 to 2013-2014. Since almost years have lapsed, it is expected that the respondent will pass order as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this order.

14. These Writ Petitions stand disposed of. No costs. Consequently, connected writ miscellaneous petitions are closed.

23.09.2024

Internet : Yes/No
Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No
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To

The Assistant Commissioner (ST),
Alagapuram Circle,
Salem.

C.SARAVANAN, J.

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