IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2024

CORAM :

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.Nos.27645, 27663, 27666, 27670, 27672 of 2021
and W.M.P.Nos.29184, 29217, 29220, 29221 & 29222 of 2021

Tvl.Graso Garments,
Represented by its
Partner: Sri.Arunprakash,
No.365/2, Nochipalayam Road,
A.P.Nagar,
Tirupur-641 605 …Petitioner in all W.P's

-Vs-

The Assistant Commissioner (ST),
Tirupur Rural-II Assessment Circle,
Tirupur. …Respondent in all W.P's

Common Prayer:Writ Petitions under Article 226 of the Constitution of India, praying for the issuance of a Writs of Certiorari, to call for the records on the files of the respondent in TIN:33102388710/2011-2012,TIN:33102388710/2012-13, TIN:33102388710/2013-14, TIN:33102388710/2014-15, TIN:33102388710/2015-16 respectively, all dated 27.08.2021, and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner in all WPs : Mr.P.Rajavelu

For Respondent in all WPs : Ms.Amirta Poonkodi Dinakaran
Government Advocate

COMMON ORDER

In these five Writ Petitions, the respective assessment order pertaining to assessment years 2011-2012, 2012-2013, 2013-2014, 2014-2015 and 2015-2016 are assailed. The common petitioner is a partnership firm, which was a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the 'TNVAT Act'). For all the five assessment years referred to above, the petitioner filed its returns. On 13.03.2020, the respondent issued notices of revision in respect of all assessment years. The petitioner asserts that such notices were not received and the petitioner was unaware of the initiation of proceedings. Eventually, the impugned assessment orders were issued on 27.08.2021.

2. Learned counsel for the petitioner submits that there was a deemed assessment in respect of assessment year 2011-2012 on 31.10.2012 and on 31.10.2013 in respect of assessment year 2012-2013. Consequently, he contends

that the limitation period of six years should be reckoned from the date of deemed assessment. If so reckoned, he submits that the proceedings relating to both the assessment years are barred by limitation as per sub-section 1 of Section 27 of the TNVAT Act. He further submits that the returns filed by the petitioner for the said assessment years were complete in all respects and that the revision notice was issued on the basis of alleged discrepancy between the data provided by the petitioner and the data provided by the petitioner's suppliers.

2.1 As regards assessment years 2013-2014, 2014-2015 and 2015-2016, he submitted that the revision notices and the consequential assessment orders pertain to mismatch. He also submitted that the revision notices were issued during the onset of the Covid-19 pandemic. On account of non receipt of notices, he submitted that the petitioner could not participate in proceedings that culminated in the respective assessment order.

3. In response to these contentions, Ms.Amirta Poonkodi Dinakaran, learned Government Advocate, submits that a deemed assessment under sub-section 2 of Section 22 of the TNVAT Act presupposes that such returns were in order. As regards the assessment years 2011-2012 and 2012-2013, she contends

that the returns were incomplete and that, therefore, proceedings were initiated under sub-section 4 of Section 22. She further contends that no period of limitation is prescribed for proceedings under sub-section 4 of the TNVAT Act.

4. With regard to assessment years 2013-2014, 2014-2015 and 2015-2016, she submits that the revision notices dated 13.03.2020 were duly served on the petitioner. As evidence thereof, she has placed on record a copy of the notice pertaining to the assessment year 2015-2016 and the corresponding acknowledgment card. Therefore, she submits that the petitioner should approach the appellate authority in respect of all these matters.

5. Sub-section 2 of Section 22 of the TNVAT Act provides for a deemed assessment on the 31st day of October of the succeeding year, provided the assessee concerned has filed returns in the prescribed form by annexing prescribed documents and proof of payment of tax. From the text of sub-section 2, it is clear that the benefit of deemed assessment would accrue subject to fulfilment of the requirements prescribed therein. Sub-section 4 of Section 22 of the TNVAT Act deals with situations where no return is submitted by the dealer or if the return is incomplete or incorrect. It stands to reason that a dealer who

does not file a return cannot seek the benefit of deemed assessment. As regards incomplete or incorrect returns, the question arises as to whether there is a period of limitation. This Court addressed the said issue in the case of *Tvl.Pupa Lineraa v. The State Tax Officer, W.P.(MD).No.14494 of 2021, order dated 27.10.2021 (Pupa Lineraa),* wherein it was concluded that the six year period specified in Section 27 of the TNVAT Act would also apply to proceedings initiated under sub-section 4 of Section 22 of the TNVAT Act.

6. If the petitioner were to be entitled to the benefit of deemed assessment, the period of limitation should be reckoned from 31.10.2012 as regards assessment year 2011-2012 and 31.10.2013 as regards assessment year 2012-2013. Undoubtedly, the period of limitation expired prior to the issuance of the revision notice with regard to both assessment years. Even if it were to be treated as a case falling under sub-section 4 of Section 22 of the TNVAT Act, if the six year period is applied as per *Pupa Lineraa,* the same result follows. Therefore, I conclude that the assessment orders in respect of assessment years 2011-2012 and 2012-2013 are liable to be quashed on the ground of limitation.

7. Turning to assessment years 2013-2014, 2014-2015 and 2015-2016, the respective assessment order is challenged on the ground of breach of principles of natural justice. Each revision notice is dated 13.03.2020, which is just two days prior to the onset of the Covid-19 pandemic.

8. On examining the impugned assessment orders for these years, it is evident that the petitioner did not participate in the proceedings. The documents on record also reflect that the tax liability was determined largely in view of the mismatch between data provided by the petitioner when compared with data provided by the petitioner's suppliers. It is in the interest of justice to provide an opportunity to the petitioner to place relevant documents on record and contest the tax demand. Solely for that reason, the impugned orders warrant interference.

9. For the reasons set out above, the following orders are issued:

(i) Assessment orders dated 27.08.2021 in respect of assessment years 2011-2012 and 2012-2013 are quashed on the ground of being barred by limitation.

(ii) The assessment orders pertaining to assessment years 2013-2014, 2014-2015 and 2015-2016 are quashed and these matters are remitted for re-consideration.

(iii) The petitioner is permitted to file a reply to the revision notice within (3) three weeks from the date of receipt of a copy of this order. Upon receipt thereof, the assessing officer is directed to provide a reasonable opportunity, including a personal hearing, to the petitioner and, thereafter, issue fresh assessment orders within a period of (2) two months.

10. With the above observations and directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

06.02.2024

Index : Yes/No
Internet : Yes/No
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SENTHILKUMAR RAMAMOORTHY, J.

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To

The Assistant Commissioner (ST),
Tirupur Rural-II Assessment Circle,
Tirupur.

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