IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2024

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A. Nos.325, 327, 328 and 334 of 2024
and
C.M.P. Nos.1986, 1988, 2003, 2017, 2019, 2068 and 2070 of 2024

M/s.Seenu Paper Mart
Represented by its Proprietor,
Mr.P.Srinivasan,
No.23, Vallalar Salai, 45 Feet Road,
Kamaraj Nagar, Puducherry-605 011. ...Appellant in all appeals

v.

1.The Assistant Commercial Tax Officer,
GD-I, Commercial Taxes Department,
Puducherry.

2.The Commercial Tax Officer,
Enforcement and Intelligence Wing,
100 Feet Road, Ellapillaichavadi,
Puducherry-605 005. ...Respondents in all appeals

Prayer in W.A.No.325 of 2024: Writ Appeal is filed under Clause 15 of the Letter Patent, praying to set aside the order passed by the learned Judge in W.P.No.14656 of 2022 dated 30.08.2023.

Prayer in W.A.No.327 of 2024: Writ Appeal is filed under Clause 15 of the Letter Patent, praying to set aside the order passed by the learned Judge in W.P.No.14653 of 2022 dated 30.08.2023.

Prayer in W.A.No.328 of 2024: Writ Appeal is filed under Clause 15 of the Letter Patent, praying to set aside the order passed by the learned Judge in W.P.No.14643 of 2022 dated 30.08.2023.

Prayer in W.A.No.334 of 2024: Writ Appeal is filed under Clause 15 of the Letter Patent, praying to set aside the order passed by the learned Judge in W.P.No.14646 of 2022 dated 30.08.2023.

For Appellant in all Appeals	: Mr.P.Rajkumar
For Respondents in all Appeals	: Mr.J.Kumaran Additional Government Pleader Puducherry

COMMON JUDGMENT

(Judgment of the court was delivered by Mohammed Shaffiq, J.)

These four writ appeals are filed against the common order of the learned Judge dismissing the appellant's writ petitions on the ground of existence of alternative remedy, while rejecting the challenge to the impugned orders of assessment relating to the assessment years 2012-13 to 2015-16 as being barred by limitation.

2. According to the appellant, this is the second round of litigation before this Court challenging the orders of assessment for the assessment years 2012-13 to 2015-16. Earlier, a composite/ consolidated notice dated 09.08.2018 for the assessment years 2012-13 to 2017-18 (upto June 2017)

was issued and the same was challenged in W.P.No.10998 of 2019 on the premise that it was not permissible to issue consolidated notice. The said writ petition was disposed of by this Court vide order dated 25.11.2021 after recording the submission of the learned counsel for the Respondents that the jurisdictional officers will pass final orders for the relevant assessment years.

3. Pursuant thereto, notices dated 11.03.2022 were issued by the 2nd Respondent along with Annexures reiterating the allegations/ proposals contained in notice dated 09.08.2018. This was followed by notices dated 19.04.2022 issued by the 1st Respondent. Objections were filed to the said notices for each of the assessment years *vide* replies dated 26.04.2022.

4. Thereafter, the impugned orders of assessment dated 10.05.2022 came to be passed for the assessment years 2012-13 to 2015-16. The same were challenged before the writ Court, by filing writ petitions bearing Nos.14643, 14646, 14653 and 14656 of 2022 which were dismissed on the ground of existence of efficacious alternative remedy. Aggrieved by the same, the writ petitioner / assessee is before this court with the present appeals.

5. The learned counsel for the appellant submitted that the appellant challenged the order of the learned Judge, which is the subject matter of these writ appeals, on the premise that the notices dated 19.04.2022 are beyond the limitation of 5 years from the year to which the assessment relates as prescribed under Section 30 of the Pondicherry Value Added Tax Act, 2007 (hereinafter referred to as "the PVAT Act") and thus, barred by limitation. It was further submitted that limitation goes to the root of jurisdiction and hence, the learned Judge erred in dismissing the writ petitions on the ground of existence of alternative remedy.

6. To the contrary, it is submitted by the learned counsel for the Respondents that prior to notices dated 19.04.2022, summons were issued on various dates including 10.05.2015, 05.10.2015 and 13.03.2017 followed by notice dated 09.08.2018. The notices dated 19.04.2022 issued pursuant to the order of this Court dated 25.11.2021 in W.P.No.10998 of 2019 must be understood as a continuation of the earlier assessment proceedings. Thus, the plea of the impugned orders of assessment being barred by limitation, cannot be sustained.

7. Heard both sides and perused the materials on record.

8. We are conscious of the fact that limitation relates to jurisdiction and an assessment barred by limitation is a nullity, however whether a particular assessment is barred by limitation or otherwise is essentially a mixed question of fact and law. It is the case of the Revenue that the assessment must be understood to have commenced with the issuance of summons in the year 2015 followed by notice in the year 2018 and the present notices issued pursuant to the directions of this Court in W.P.No.10998 of 2019 must only be understood to be a continuation of the earlier proceedings. Whether summons and notices were issued or not in the years 2015 and 2018 is disputed, and whether the further notices dated 19.04.2022 would constitute initiation or continuation of the earlier assessment proceeding is also in dispute. In the said circumstances, whether the impugned assessments are barred by limitation, is a mixed question of fact and law. It is trite law that remedy under Article 226 of the Constitution of India is discretionary in nature. It is for the above reason that the learned Judge has refused to exercise his discretion under Article 226 of the Constitution of India, which does not warrant interference by this court.

9. We do not find any error in the order of the learned Judge rejecting the writ petitions on the ground of existence of alternative remedy in the facts

of the present case.

10. In such view of the matter, the Writ Appeals fail and are accordingly, dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D., J.] [M.S.Q., J.]
01.04.2024

Index: Yes/No
Speaking order / Non speaking order
Neutral Citation: Yes/No
mka

To

1.The Assistant Commercial Tax Officer,
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Puducherry.

2.The Commercial Tax Officer,
Enforcement and Intelligence Wing,
100 Feet Road, Ellapillaichavadi,
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R.MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

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