BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.09.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.17657 of 2024
and
W.M.P.(MD)No.15153 of 2024

Tvl.Aruppukottai Shri Vijayalakshmi Textiles Mills (P) Limited,
Represented by its Director,
G.Ravi ... Petitioner

Vs.

The Assistant Commissioner (ST) (FAC),
Commercial Tax Building,
Aruppukottai. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records in TIN No. 33985800783/2014-15 dated 05.09.2023 issued by the respondent and quash the same as illegal and in violation of the principles of natural justice, without jurisdiction and barred by limitation as prescribed under Section 27 of the Tamil Nadu Value Added Tax, 2006.

For Petitioner : Mr.N.Sudalaimuthu

For Respondent : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned order dated 05.09.2023 on the premise that it is barred by limitation in terms of Section 27 of TNVAT Act.

2. It is submitted that the petitioner is a registered dealer under TNVAT Act and engaged in manufacture of yarn. For the assessment year 2014-2015, the petitioner had filed its return and paid the appropriate taxes. It is submitted that no orders of assessment were made. It was thus submitted that the petitioner must be deemed to have been assessed in terms of Section 22(2) of the TNVAT Act on 31.10.2015 which is not disputed by the learned Additional Government Pleader for the respondent. That being the case, the impugned order of assessment ought to have been made within six years thereon i.e., 31.10.2021. However, the first of the notices has been issued only on 22.06.2022 which was served on the petitioner on 25.06.2022 that is much

beyond the prescribed period of limitation for making assessments under Section 27 of the TNVAT Act.

3. It is submitted by the learned Additional Government Pleader for the respondent that the assessment under the CST Act for the said assessment year has been made only on 30.01.2017 and thus limitation, if any, ought to be reckoned only from that day onwards, for the purposes of making re-assessment under Section 27 of the TNVAT Act.

4. Heard the submissions made on both sides and perused the materials on records.

5. Before proceeding further, it may be relevant to refer Section 27 of TNVAT Act, 2006 which reads as under:

> **"27. Assessment of escaped turnover and wrong availment of input tax credit.**
>
> (1)(a)*Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of sub-section (3), at any time within a period of [six years*

from the date of assessment] [These words were substituted for the words 'five years from the date of assessment order by the assessing authority' by Section 6 (1) of the Fifth Amendment Act 23 of 2012, effective from a date to be notified and notified as 19th June 2012 by GO.No.82], determine to the best of its judgment the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary.

(b)*Where, for any reason, the whole or any part of the turnover of business of a dealer has been assessed at a rate lower than the rate at which it is assessable, the assessing authority may, at any time within a period of [six years from the date of assessment] [These words were substituted by Section 6 of the aforesaid Fifth Amendment Act, 23 of 2012 for the words 'five years from the date of order of assessment by the assessing authority'], reassess the tax due after making such enquiry as it may consider necessary.*

(2)*Where, for any reason, the input tax credit has been availed wrongly or where any dealer produces false bills, vouchers, declaration certificate or any other documents with a view to support his claim of input tax credit or refund, the assessing authority shall, at any time, within a period of [six years from the date of assessment] [These words were substituted by Section 6 of the aforesaid Fifth*

Amendment Act, 23 of 2012 for the words 'five years from the date of order of assessment by the assessing authority'], reverse input tax credit availed and determine the tax due after making such a enquiry, as it may consider necessary:

Provided that no order shall be passed under sub-sections (1) and (2) without giving the dealer a reasonable opportunity to show cause against such order.

A reading of the above provision would show that re-assesment under Section 27 of the Act ought to be determined within 6 years from the date of order of assessment.

6. In the present case, it is admitted that the assessment is deemed to have been made in terms of Section 22 of the TNVAT Act on 31.10.2015. Thus, limitation under Section 27 of the Act would expire on 31.10.2021. However as stated above, first of the notices under TNVAT Act has been issued only on 22.06.2022, that is well after the period of limitation prescribed under Section 27 of the Act. The submission of the learned Additional Government Pleader that the assessment orders for the assessment year 2014-2015 under CST Act has been made on 30.01.2017 and thus, the limitation ought to be reckoned

from the date of assessment under CST is made completely irrational and illogic. The limitation of six years from the date of order of assessment prescribed under Section 27 of the TNVAT Act is the order of assessment under TNVAT Act and the order of assessment, if any, under CST Act would have no relevance in reckoning the limitation for the purpose of re-assessment under Section 27 of TNVAT Act.

7. In view thereof, the contention of revenue is liable to be rejected. It is thus beyond the pale of any doubt the impugned order of assessment under Section 27 of TNVAT Act is beyond the period of limitation. It is trite law that the limitation goes to the root of the jurisdiction and an assessment barred by limitation is a nullity. In this regard, it may be relevant to refer to the following judgments:

(i) CIT v. Alagendran Finance Ltd., reported in **(2007) 7 SCC 215, held as follows:**

> *"20. ....The revisional jurisdiction having, thus, been invoked by the Commissioner of Income Tax beyond the period of limitation, it was wholly without jurisdiction rendering the entire proceeding a nullity."*

(ii) ***ITW Signode India Ltd. v. CCE, reported in (2004) 3 SCC 48,*** held as follows:

> *" 69. The question of limitation involves a question of jurisdiction. ...."*

8. In view thereof, the impugned of assessment is barred by limitation and the same is liable to be set aside. Accordingly, the impugned order dated 05.09.2023 is set aside.

9. This Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

05.09.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr

MOHAMMED SHAFFIQ, J.

Nsr

To:

The Assistant Commissioner (ST) (FAC),
Commercial Tax Building,
Aruppukottai.

W.P.(MD)No.17657 of 2024

05.09.2024