BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.09.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD)No.19452 of 2024
and
W.M.P(MD)No.16523 of 2024

M.Palanikumar ... Petitioner

Vs.

1.The Deputy Commissioner (ST) (FAC),
Commercial Tax Building Complex,
Law College Road,
Madurai-20.

2.The Assistant Commissioner (ST) (FAC),
Thirupparankundram Assessment Circle,
Madurai-20. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order issued by the second respondent in Para No.AA10/ROC.8/2014, A1, dated 29.05.2024 and quash the same on the ground that the same is arbitrary, illegal and without legal basis and without jurisdiction consequently directing the respondents to drop all further proceedings pertaining to the impugned order, dated 29.05.2024 and pass such further or other orders as this Court.

For Petitioner : Mr.R.Aravindan

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

ORDER

The present writ petition is filed challenging the impugned order, dated 29.05.2024 on the premise that it has been barred by limitation in terms of Section 27 of the Tamil Nadu Value Added Tax Act, 2006. The impugned order finds that the petitioner was originally assessed in terms of Section 22(2) of the TNVAT Act for the assessment year 2011-2012 i.e., on 30.10.2012.

2. It is submitted by the learned Counsel for the petitioner that verification of the monthly returns, allegedly revealed certain discrepancies in the value of Input Tax Credit between Form-I and Annexure-I of the monthly return. A notice was issued on 02.05.2024, proposing to reverse the excess ITC and impose penalty under Section 27(4)(ii) of the TNVAT Act. It is further submitted by the learned Counsel for the petitioner that the limitation for the assessment year 2011-2012 under Section 27 of the Act was 6 years from the date of assessment. Assessment under Section 22(2) of the Act having been made on 31.10.2012, the limitation under Section 27 of the TNVAT Act (i.e.,) 6 years from the date of assessment under Section 22(2) of the Act would expire on 31.10.2018. The impugned orders of assessment made on the basis of a notice, dated 02.05.2024 is thus barred by limitation.

3. To the contrary, the learned Additional Government Pleader for the respondent would submit that the impugned order, is an appealable order.

4. This Court finds merit in the submission of the learned Counsel for the petitioner that the impugned order is barred by limitation. It is trite law that limitation goes to the root of jurisdiction and an order which is barred by limitation is a nullity. In this regard, it may be useful to refer to the following judgments of the Hon'ble Supreme Court of India:

1) ***CIT Vs. Alagendran Finance Limited*** reported in ***(2007) 7 SCC 215***, wherein it was held as under:

> *"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."*
>
> *(emphasis supplied)"*

2) ***ITW Signode India Ltd v. CCE*** reported in ***(2004) 3 SCC 48,*** wherein it was held as under:

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

5. Therefore, this Court is of the view that the impugned order being barred by limitation is a nullity and without jurisdiction, thus the same is set aside.

6. Accordingly, the writ petition stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

05.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

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2.The Assistant Commissioner (ST) (FAC),
Thirupparankundram Assessment Circle,
Madurai-20.

MOHAMMED SHAFFIQ, J.

BTR

W.P(MD)No.19452 of 2024

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