BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD)No.20988 of 2024
and
W.M.P(MD)No.17780 of 2024

Tvl.AJB Leather,
Represented by its Proprietor,
A.J.Balasubramanian. ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
Office of the Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The Assistant Commissioner (CT),
Dindigul Rural Assessment Circle,
Commercial Taxes Office,
Sub-Collectors Office Road,
Dindigul-624 001. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for records pertaining to the impugned proceedings of the second respondent in

TIN:33155262222/2013-2014, dated 01.07.2024 and quash the same and pass such further or other orders as this Court.

For Petitioner : Mr.B.Rooban

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

ORDER

The present writ petition is filed challenging the orders of assessment under Section 27 of the Tamil Nadu Value Added Tax Act, dated 01.07.2024 on the premise that it is barred by limitation.

2. It was submitted by the learned Counsel for the petitioner that he is the proprietor of a business concern carrying on business under the name and style of 'AJB Leather', registered under the TNVAT Act. The petitioner had submitted its final return in form WW in terms of Section 63-A of the TNVAT Act. The impugned order proceeds on the basis that scrutiny of Form WW statement for the assessment year 2013-2014, revealed that the petitioner had purchased Raw hides and Skins from various dealers and were liable to pay purchase tax under Section 12 of the TNVAT Act, in respect of the above purchases.

3. It was further submitted by the learned Counsel for the petitioner that the petitioner has claimed the Input Tax Credit within the stipulated period under Section 19(11) of the TNVAT Act and that the petitioner had submitted their returns electronically for the assessment year 2013-2014.

4. It was also submitted by the learned Counsel for the petitioner that, the petitioner is deemed to have been assessed on 31.10.2014 in terms of Section 22(2) of the Act. Any assessment thereafter could be made invoking Section 27 of the Act, within 6 years thereafter i.e., on or before 31.10.2020. However, the first of the notices was issued only on 18.10.2021, which is well beyond the period of limitation and thus the proceedings for the assessment having been initiated much after the limitation period, the same is a nullity and without jurisdiction.

5. To the contrary, it was submitted by the learned Additional Government Pleader for the respondent that prior to the notice, dated 18.10.2021, a notice was issued on 13.08.2015 by way of an RPAD. In response to the same, the learned Counsel for the petitioner would submit that no such notice was ever received. In any view, neither an acknowledgment of having been served with the above notice is produced, further the impugned order of assessment does not make any reference whatsoever to the said notice, dated 13.08.2015. It was thus submitted that the same was never issued and thus cannot be taken into account for reckoning limitation.

6. Assuming that the said notice dated 13.08.2015 was in fact issued and served on the petitioner, this Court is of the view that the impugned proceedings would still be bad inasmuch as after having issued notice, dated 13.08.2015, there was no further progress until the next notice was issued on 18.10.2021 i.e., more than 6 years.

7. It is trite law that whenever there is no prescribed period for performing a particular Act, it must be done within a reasonable period. In this regard, assuming that the notice was issued on 13.08.2015, initiating the re-assessment under Section 27 of the Act, further proceedings cannot be justified inasmuch as there is an unreasonable delay on the part of the respondent authority in completing the re-assessment thereby vitiating the order. In this regard it may be relevant to refer to the following judgments, wherein this

Court has held that though the issuance of notice was within the period of limitation, however if the orders are not made within a reasonable time, mere issuance of show cause notice would not by itself provide immunity to the assessment orders from being challenged as having been made beyond reasonable period and thereby suffers from the vice of arbitrariness. In this regard, it may be relevant to refer to the following judgments:

(i) ***J.M.Baxi and Co. Vs. UOI*** reported in ***2016 (336) E.L.T. 285 (Mad)***:

> *"16. In the order of adjudication dated 07.01.2000, there is nothing to indicate as to what transpired from 23.5.1995 up to 07.01.2000, except for two dates. One is a letter dated 23.10.1999 where the appellant sought an injury to be inflicted upon them voluntarily, reminding the Department of the pendency of the show cause notice. The next date is 04.01.2000 when a personal hearing took place. Therefore, the order of adjudication certainly had not taken place within a reasonable period. Though the statute does not prescribe a period of limitation for passing an order of adjudication, the law is well settled that anything in respect of which no period of limitation is prescribed, should be done at least within a reasonable time. What is reasonable time, would depend upon the facts and circumstances of each case. In cases of this nature, where the weight of the cargo discharged by the vessel of a Steamer Agent is questioned, it is not possible for a Steamer Agent to defend*

themselves against the show cause notice long after the vessel had sailed. Therefore, the third question of law is also be answered in favour of the appellant."

(ii) ***J.Sheik Parith Vs. Commissioner of Customs and another*** reported in ***2020 (374) E.L.T. 15 (Mad.)***:

"23. In Premier Ltd. v. UOI (W.P. No. 12780 of 2016 dated 13.02.2017), a Division Bench of the Bombay High Court considered a challenge to the show cause - cum-demand notice dated 22.07.1991, in response to which personal hearings were fixed only in 1997. The Court held that such delay would vitiate the validity of the notice itself holding at paragraph 9 that the power to issue a show cause notice carries with it the responsibility to adjducate upon it promptly.

...28. In Sanghvi Reconditioners Pvt. Ltd. v. Union of India (2018 (12) GSTL 290), a Division Bench of the Bombay High Court considered the delay of fifteen (15) years from issuance of a show cause notice and thirteen (13) years after a hearing for fresh proceedings had been initiated by the revenue. This was also a case where the proceedings had been consigned to the call book. The petitioner in that matter succeeded on the ground that the inordinate delay had not been justified by the revenue.

29. In Transworld Shipping Services Pvt. Ltd. v. Government of India (381 ELT 178) a learned single Judge of *this Court, and in Surendralal Girdharilal Mehta v. Union of India (W.P. No. 322 of 2015 dated 17.05.2018) the Calcutta High Court once again reiterated the settled position that an authority exercising power under the Statute can engage in an action that has the effect of disturbing the rights of a citizen only within the time stipulated and where such limitation was not stipulated, within a reasonable time.”*

(iii)***Kanthimathy Estate vs. The Assistant Commissioner Commercial Taxes in W.P.(MD)Nos.3056 of 2016 etc., batch***:

“7. It is thus clear that a dealer is required to statutorily maintain and preserve books of accounts and all documents connected and ancillary to its business only for a period of five years from the date on which the assessment relating to that year had become final. In the present case, the periods of assessment stretch from 1989-1990 to 1994-1995. The pre-assessment notices have been sent only on 23.08.1999 and proceedings completed in 2015. Thus even on this score, the time taken for conclusion of proceedings appears inordinately delayed and it thus unacceptable . The impugned orders are quashed.”

8. It is thus clear that even if the notice was issued within the prescribed period of limitation, inordinate/unreasonable delay in completing the proceedings would vitiate the impugned order / proceedings. In view of the same, following the above orders of this Court and in particular, the case of ***Kanthimathy Estate vs. The Assistant Commissioner Commercial Taxes*** in ***W.P.(MD)Nos.3056 of 2016 etc., batch,*** wherein, the provisions of Section 16 which is *pari materia* to Section 27 was considered, and it was held that failure to complete the reassessment proceedings within a reasonable time after initiation of the proceedings, would vitiate the reassessment. In view thereof, the impugned order of assessment cannot be sustained and thus set aside.

9. Accordingly, this Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

13.09.2024

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

To

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MOHAMMED SHAFFIQ, J.

BTR

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