

WP No.21877 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 27.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

WP. No.21877 of 2021
and
WMP No.23070 of 2021

M/s.Eureka Systems and Electrodes (P) Ltd.,
Represented by its Managing Director,
K.Chandrashekar,
11/15A, Selvarajapuram, Chinthamanipudur,
Coimbatore-641 103.

... Petitioner

versus

The Assistant Commissioner (ST),
Palladam-2 Assessment Circle,
Palladam.

... Respondent

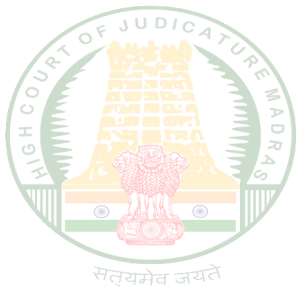
PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari, calling for the records of the respondent in his proceedings in CST No.750340/2002-03 dated 02.09.2021 and quash the same as illegal and pass orders.

For the Petitioner

:Mr.S.Ramanathan

For the Respondent

:Ms.Amrita Dinakaran
Government Advocate



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ORDER

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The present writ petition is filed challenging the impugned order dated 02.09.2021 for the assessment year 2002-2003 on the premise that it is made after an unreasonable delay and thus suffers from the vice of manifest arbitrariness, thereby falling foul of Article 14 of the Constitution.

2.1. The petitioner was engaged in the manufacture and sales of welding electrodes. The petitioner was a registered dealer under the Tamil Nadu General Sales Tax Act and Central Sales Tax, 1956. During the relevant assessment year viz. 2002-2003, the petitioner reported a total and taxable turnover of Rs.65,21,217/- and Rs.9,97,181/- respectively. The petitioner claimed exemptions on transactions which according to them constituted stock transfer in terms of Section 6A of the CST Act. While so, there was an inspection in the petitioner's place of business on 09.01.2004. During the course of such inspection, it is stated that certain files and records were recovered. Pursuant thereto, a notice dated 12.11.2004 came to be issued proposing to reject the claim of stock transfer made by the



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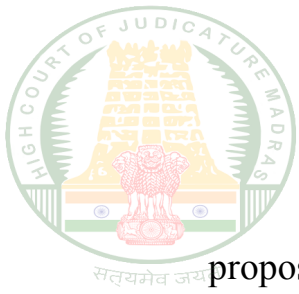
petitioner and treating it to be a direct inter-state sales under Section 3(a) of the CST Act.

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2.2. The petitioner submitted its preliminary objection on 20.12.2004 *inter alia* highlighting that no orders were received prior to the inter-state sales and that transactions are stock transfer and not inter-state sales, as proposed by the respondent.

2.3. The petitioner also filed a writ petition in W.P.No.39413 of 2004 seeking, furnishing of details of investigation, findings of the Revenue in respect of 259 transactions, proposed to be treated as inter-state sales. This court, by order dated 31.12.2004 was pleased to dispose of the above writ petition recording the submission of the learned counsel for the respondent therein that the respondent are willing to furnish the details required by the petitioner within a period of four weeks.

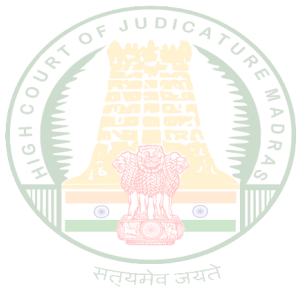
2.4. Thereafter, the petitioner vide letter dated 03.01.2005 sought for details of investigation and findings, in respect of the 259 transactions



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proposed to be treated as inter-state sales rejecting the petitioner's claim of stock transfer. Thereafter, the respondent authority had not proceeded further until a personal hearing notice came to be issued on 08.07.2021 i.e. almost more than 15 years after the request for furnishing of documents/details made by the petitioner pursuant to the orders of this Court in W.P.No.39413 of 2004 dated 31.12.2004. Pursuant thereto, the petitioner submitted its reply, wherein it was *inter alia* stated that the continuation of the assessment proceedings after more than 16 years since its initiation cannot be sustained and reliance was sought to be placed on a judgment of this court in ***M/s.Pondy Die Casting (P) Ltd vs Appellate Assistant Commissioner in T.C.(Revision) Nos.37 and 39 of 2017 dated 27.10.2017.***

3. The petitioner filed its reply on 21.08.2021 and again on 25.08.2021 reiterating that the impugned proceedings cannot be sustained in view of delay. However, the respondent authority had passed the impugned order on 02.09.2021 by placing reliance upon Section 12 (2)B of the Act which reads as under:



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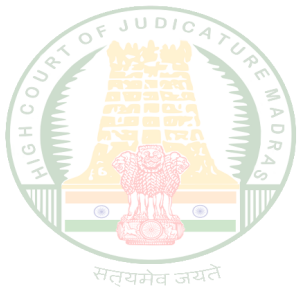
In computing the period of limitation for assessment under this section the following period shall be excluded, namely:-

i) the time during which the proceedings for assessment, remained stayed under the orders of a civil court or other authority;

ii) the time during which any appeal or other proceeding in respect of any other assessment or reassessment is pending before the Special Tribunal, the High Court or the Supreme Court involving a question of law having a direct bearing on the assessment in question.

iii) the time during which any appeal or proceeding in respect of any assessment or reassessment of the same part of the turnover made under any other enactment was pending before any appellate or revisional authority or the Special Tribunal or the High Court or the Supreme Court.

4. It is brought to the notice of this Court that the above provision was introduced by Act 60/97-Gazette dated 06.11.1997, with retrospective effect from 11.04.1996 and the same was omitted by Act 6/2000-Gazette dated 31.03.2000, effective from 01.04.1996 with retrospective effect. In other words, the effect of the above amendment was as though the above provision never existed.



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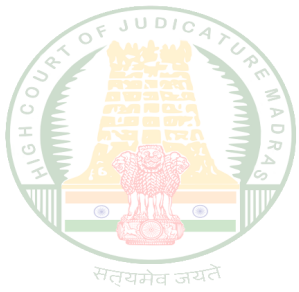
5. It was thus submitted that the impugned order suffers from an error apparent inasmuch as it looks to non-existent provision.

6. In any view it was submitted that the impugned order suffers from the vice of being unreasonable and arbitrary in view of the unreasonable delay.

7. To the contrary, learned counsel for the respondent would submit that proceedings were initiated within reasonable time and it was in view of the fact that the petitioner had not responded that there was delay and therefore the petitioner cannot blame the respondent authority for the delay.

8. Heard both sides and perused the materials available on record.

9. It is trite law that wherever limitation has not been prescribed for taking any action or passing any orders, it has been consistently held that action ought to be taken or orders ought to be passed within a reasonable time.



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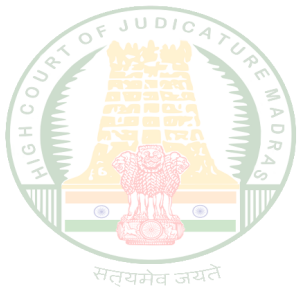
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10. It may be relevant to note that this Court had held that though the issuance of notice was within the period of limitation, however if the orders are not made within a reasonable time, mere issuance of show cause notice would not by itself provide immunity to the assessment orders being challenged as having been made beyond reasonable period thereby suffering 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.”

(emphasis supplied)



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WEB CO (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 adjudicate upon it promptly.

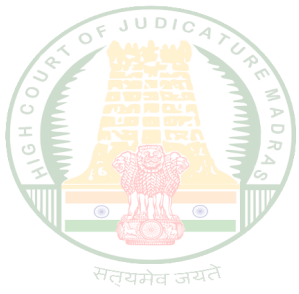
...28. In Sanghvi Reconditioners Pvt. Ltd. v. Union of India (2018 (12) GSTL 290), a Division Bench of the Bombay High Court considered the delay of fifteen (15) years from issuance of a show cause notice and thirteen (13) years after a hearing for fresh proceedings had been initiated by the revenue. 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.”

(emphasis supplied)

(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.



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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.”

(emphasis supplied)

11. 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 same. In the present case, there is no explanation as to why it has taken more than 16 years after the issuance of the first notice on 12.11.2004 to issue the hearing notice on 08.07.2021 while proceeding to pass the impugned order on 02.09.2021 after almost 16 years from the date of deemed assessment. This Court in the case of *J.M.Baxi* (cited supra) found that failure to explain the delay of 5 years after initiation would vitiate the proceeding on the ground of unreasonable delay. In view of the same and 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 it was held that failure to complete the reassessment proceedings within a



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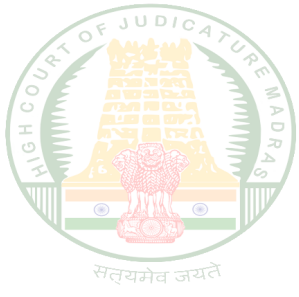
reasonable time after initiation of proceedings within the prescribed period would vitiate the reassessment, this Court is of the view that the impugned order of reassessment cannot be sustained and is liable to be set aside.

14. As a result, the writ petition is allowed. No costs. Consequently, connected writ miscellaneous petition is closed.

27.02.2025

Index : Yes/No
Neutral Citation : Yes/No
mrn

To:
The Assistant Commissioner (ST),
Palladam-2 Assessment Circle,
Palladam



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MOHAMMED SHAFFIQ, J.

(mrn)

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