BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

W.A.(MD)No.1445 of 2022
AND
C.M.P.(MD)No.11624 of 2022

The State Tax Officer,
Karur-3 Assessment Circle, Karur. ... Appellant / Respondent

Vs.

Tvl.Pupa Lineraa,Rep. By its Partner,
S.Pushpa Rajan,113, Periakulathu Palayam West,
Vengamedu Inam,
Karur-639 006. ... Respondent / Writ petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 27.10.2021 made in W.P.(MD)No.14494 of 2021 and allow the writ appeal.

For Appellant : Mr.R.Suresh Kumar,
Additional Government Pleader.

For Respondent : Mr.N.Prasad for Mr.N.Inbarajan

JUDGMENT

(Order of the Court was delivered by G.R.SWAMINATHAN, J.)

Heard the learned Additional Government Pleader appearing for the appellant and the learned counsel appearing for the respondent / assessee.

2.The respondent herein is a registered dealer coming under the jurisdiction of the appellant. They were engaged in the business of buying and selling Ceramic tiles and processing the broken tiles and selling them as border tiles. The case on hand pertains to the assessment year 2012-13. The dealer had been filing their monthly returns as per Section 21 of the Tamil Nadu Value Added Tax Act, 2006. Section 22(2) of the Act states that every such dealer shall be deemed to have been assessed for the year on the 31st day of October of the succeeding year. Since we are concerned with the assessment year 2012-13, the dealer shall be deemed to have been assessed on 31.10.2013.

3.There was a raid by the Enforcement Wing on the dealer's business premises on 28.04.2015, 29.04.2015, 11.06.2015 to

14.06.2015. Certain irregularities were noted. Hence, notice under Section 22(4) of the Act was issued on 20.08.2015. The assessee offered their explanation. The proceedings dated 29.01.2016 issued by the Commercial Tax Officer, Karur (East) generated only nil demand.

4.The matter did not rest there. On 22.02.2021, the assessing officer issued notice under Section 27 of the Act. The assessing officer noted that the assessee had effected inter-state purchases of Ceramic tiles to the tune of Rs.83,26,868/- during the year 2012-2013 ; but suppressed the same while filing the monthly returns. The assessing officer is said to have come across the said information on verification of Gujarat check post data. In response to the notice, the assessee replied vide letter dated 25.03.2021 that they had closed their firm on 01.06.2016 itself ; they had cancelled the registration under TNVAT Act and also duly intimated the same to the authority. Thereafter, the assessing officer passed the order dated 30.03.2021 under Section 27(1)(a) of the TNVAT Act, 2006 determining the assessee's additional tax liability at Rs.14,60,949/- ; penalty to the tune of Rs.21,91,424/- was also levied. Challenging the said assessment order passed under Section 27 of the Act, the assessee filed WP.(MD)No.14494 of 2021. The learned single Judge vide order dated 27.10.2021 quashed the assessment order and allowed the writ petition on the ground that it was time barred. Challenging the said order, the department has filed this intra-court appeal.

5.The learned Additional Government Pleader appearing for the appellant pointed out that the proceedings cannot be said to be time-barred.

6.Before the learned Single Judge, the department argued that the expression “assessment” occurring in Section 27(1)(a) of the Act for the purpose of computing limitation would mean either deemed assessment under Section 22 (2) of the Act or re-assessment under Section 22(4) of the Act depending on the context. The assessee had been re-assessed on 30.09.2016. Hence, limitation for invoking Section 27 of TNVAT Act, 2006 would start only from 30.09.2016. Since notice was issued on 22.02.2021, it was within six years and cannot be said to be time-barred. This contention was rejected by the learned Single Judge who held that re-assessment under Section 22(4) must be made before the deeming assessment is made on the 31st October of the succeeding year. Since it was not so done, the date of deemed assessment alone shall be construed as assessment date for the purpose of reckoning the limitation of six years for invoking Section 27(1)(a) of the Act. This proposition no longer holds good in view of the subsequent decision of the Hon'ble Division Bench vide order dated 18.09.2024 in ***WP Nos.6153 of 2021 etc., (M/s.Oliva Care vs. State Tax Officer, Podhanur Assessment Circle, Coimbatore***). It was held therein that there is no period of limitation under Section 22(4) of TNVAT Act, 2006 for passing an order if any of the three circumstances stipulated in the provision are attracted. It was however clarified that this power must be exercised within a reasonable period. The order of the learned Single Judge rests on the proposition that re-assessment under Section 22(4) of the Act cannot be after the date of deemed assessment. Since this proposition is no longer tenable, the order of the learned Single Judge warrants interference.

7.For passing an order under Section 27(1)(a) of the TNVAT

Act, 2006, the proceedings should have been initiated within a period of six years from the date of assessment. Since the learned Single Judge took 31.10.2013 as the starting point for limitation, it was concluded that proceedings under Section 27(1)(a) of the Act, 2006 should have been initiated prior to 29.10.2019. As the proceedings were initiated only on 22.02.2021, the learned Single Judge held that they were hit by limitation. For the reasons set out in the previous paragraph, this conclusion cannot hold good. The starting point for limitation cannot be 31.10.2013 but only 29.01.2016 as rightly contended by the assessing officer.

8.Though we have agreed with the learned Additional Government Pleader on the issue of limitation, we are still of the view that the assessment order impugned in the writ petition was rightly set aside. This is because, the notices preceding the assessment order are delightfully vague. Vagueness is one of the recognized grounds for judicial review. Section 27(1)(a) of the TNVAT Act, 2006 which provides for revision of assessment contemplates issuing show cause notice, giving the dealer a reasonable opportunity and making enquiry. In other words, there has to be due compliance with the principles of natural justice. The issue has civil consequences and financial implications for the assessee. When any show cause notice is issued, it must contain sufficient details and particulars. Only then the noticee can adequately defend himself. He should know what he is up against. A show cause notice is like a charge. Unless it is precise, the person called upon to respond cannot defend himself. That is why, vagueness is a ground for interference by the writ court even at the notice stage. It would have been better if the writ petitioner had pointed this out earlier and demanded better particulars from the appellant. But the failure or omission on the part of the assessee cannot be taken advantage by the assessing officer. An order is like a superstructure. The show cause notice is the foundation. If the foundation is weak, the superstructure will fall at the slightest push.

9.We went through the notice dated 22.02.2021 issued by the appellant. The opening paragraph reads as follows :

> "Please take notice that from the verification of Gujarat Check post data, you have effected interstate purchase of Ceramic tiles to the tune of Rs.83,26,858/- during the year 2012-2013.But you have reported the interstate purchases in your Annexure-l and IA of the monthly returns for the month of June 2012 to March 2013 is NIL. It proves that you had suppressed the interstate purchases of ceramic tiles for the turnover of Rs.83,26,868/- for the year 2012-2013."

The noticee can only deny such an allegation. The assessee ought to have been confronted with specific transactional details. One is not able to discern as to how many purchases were made by the assessee and from whom and on what dates. Nothing has been spelt out. The assessee has not been given reasonable opportunity to defend themselves. That apart, the expression employed in the notice is "proved". This indicates utter pre-determination on the part of the assessing officer. The assessing officer after providing all the details should form only tentative conclusions which are liable to be displaced if the assessee shows good cause. If in the show cause notice itself, final decision has been arrived at, then the subsequent enquiry can only be termed as a farcical exercise. That is why, in the decision reported in ***(2017) 99 VST 343 (Mad) JKM Graphics Solutions Private Limited V. CTO, Vepery Assessment Circle, Chennai),*** it was held that notice issued under Section 27(1)(a) of the Act should disclose full particulars, since the noticee is expected to know as to whether what is the case levelled against him which he has to respond. If the details furnished are inadequate, the show cause notice cannot be said to be in consonance with the statutory scheme.

10.For the foregoing reasons, while confirming the order of the learned Single Judge setting aside the order impugned in the writ petition, we grant liberty to the appellant to proceed afresh as per law. If the appellant initiates action within two months, the assessee cannot raise the plea of limitation. The order of the learned Single Judge is modified. This writ appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.SWAMINATHAN, J.) & (M.JOTHIRAMAN, J.)
12th March 2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU

To

The State Tax Officer,
Karur-3 Assessment Circle, Karur.

G.R.SWAMINATHAN, J.

AND

M.JOTHIRAMAN, J.

PMU

W.A.(MD)No.1445 of 2022

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