BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.03.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.A(MD)Nos.667 & 668 of 2022
and
C.M.P(MD)Nos.5663 & 5664 of 2022

W.A(MD)No.667 of 2022:

Tvl.R.Sankara Narayanan Industries,
Represented by its Proprietor
R.Sankara Narayanan,
No.114, Opposite to RMTC Colony,
Mariammankovilpatti,
Theni. ... Appellant / Petitioner

Vs.

The Deputy State Tax Officer – 2,
Theni – 1. ... Respondent / Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order of the learned Judge in W.P(MD)No.4380 of 2022 dated 28.04.2022 and allow the above said Writ Appeal.

For Appellant : Mr.A.Chandrasekaran

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

W.A(MD)No.668 of 2022:

Tvl.R.Sankara Narayanan Industries,
Represented by its Proprietor
R.Sankara Narayanan,
No.114, Opposite to RMTC Colony,
Mariammankovilpatti,
Theni. ... Appellant / Petitioner

Vs.

The Deputy State Tax Officer – 2,
Theni – 1. ... Respondent / Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order of the learned Judge in W.P(MD)No.4381 of 2022 dated 28.04.2022 and allow the above said Writ Appeal.

For Appellant : Mr.A.Chandrasekaran

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

COMMON JUDGMENT

(Judgment of the Court was made by G.R.Swaminathan J.)

Heard both sides.

2.The appellant was a dealer in Charcoal and Agarbathies. The case on hand pertains to the assessment of the dealers under Central

Sales Tax Act, 1956. The assessee had paid tax at 2% by submitting C-Form.

3.While so on 14.07.2021, the respondent issued notice for the years 2009-10 and 2010-11 calling upon the assessee / dealer to produce the 'C' Form declarations. The assessee offered their explanation. They also attended the personal hearing. The stand of the assessee was that they were maintaining the accounts only for a period of 6 years and that therefore they are not in a position to comply with the demand of the assessing officer.

4.Not satisfied with the explanation given by the assessee, the assessing officer passed order dated 08.02.2022 denying concessional rate of 2% and levying higher rate of 4%. Challenging the said assessment order, the assessee filed W.P(MD)Nos.4380 and 4381 of 2022. The learned single Judge vide order dated 28.04.2022 dismissed the writ petitions and granted liberty to the assessee to file statutory appeals. Aggrieved by the same, these writ appeals have been filed.

5.The prime contention urged by the learned counsel appearing for the appellant is that the demand is bared by limitation. He pointed out that the assessment years are 2009-2010 and 2010-2011. Rule 64(2)(b) of the Tamil Nadu Value Added Tax Rules, 2007 mandates that the dealer / assessee must maintain the books of account and documents for a period of 6 years from the end of the assessment year. Therefore, the assessee cannot be faulted for not keeping the photo copies of the C-form originally submitted by them. The assessee reiterates before us that they did submit the C-form declaration during the relevant time.

6.The learned Additional Government Pleader appearing for the assessing officer is right in his submission that there is no limitation period for making original assessment under Section 22(4) of Tamil Nadu Value Added Tax Act, 2006 read with Section 9(2) of the Central Sales Tax Act, 1956. Though a learned Judge of this Court had earlier held that the original assessment must be made before the deemed assessment kicks in, there has been a subsequent change in the legal position. He drew our attention to the order dated 18.09.2024 rendered by the Hon'ble Division Bench in W.P.Nos.6153, 6156 and 6157 of 2022

(M/s.Oliva Care Vs The State Tax Offier, Podanur Assessment Circle, Coimbatore). It was held therein that there is no period of limitation prescribed for making original assessment under Section 22(4) of Tamil Nadu Value Added Tax Act, 2006. But the very same Hon'ble Division Bench had clarified that this power must be exercised within a reasonable period. The only question that we are called upon to determine is whether in this case the impugned assessment was made within a reasonable period. It is obvious that the issue is sought to be reopened by the Department after a lapse of more than a decade. We do not want to lay down any hard and fast rule prescribing what would be the reasonable period. This issue has to be determined with reference to the facts and circumstances of each case.

7.Coming to the case on hand, we hold that the notice and assessment under Section 22(4) of Tamil Nadu Value Added Tax Act, 2006 have not been issued within a reasonable period. Respectfully applying the Hon'ble Division Bench decision rendered in ***M/s.Oliva Care,*** we hold that the impugned proceedings are hit by limitation. In this view of the matter, the orders impugned in the writ petitions as well as in these Writ Appeals are set aside.

8.These Writ Appeals are allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

[G.R.S., J.] **[M.J.R., J.]**
19.03.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
MGA

To

The Deputy State Tax Officer – 2,
Theni – 1.

G.R.SWAMINATHAN,J.

AND

M.JOTHIRAMAN, J.

MGA

W.A(MD)Nos.667 & 668 of 2022
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