(2013) 08 MAD CK 0184

In the Madras High Court

Case No : Writ Petition No. 1383 of 2005

M/s. Universal Abrasives — APPELLANT

Vs

The Commercial Tax Officer — RESPONDENT

Date of Decision : 30-08-2013

Acts Referred:

Central Sales Tax Act, 1956 — Section 9(2)
Constitution of India, 1950 — Article 226
Tamil Nadu General Sales Tax Act, 1959 — Section 16, 16(1), 16(1)(a)

Citation : (2014) 68 VST 386

Hon'ble Judges : T.S. Sivagnanam, J;R. Banumathi, J

Bench : Division Bench

Advocate : T. Pramod Kumar Chopda, for the Appellant; A.R. Jayaprathap, Govt. Advocate, for the Respondent

Judgement

R. Banumathi, J.—Challenging the revised assessment order issued by the respondent in CST. No. 50386/98-99 dated 23.8.2004 as barred by limitation, the petitioner has preferred this writ petition. The petitioner is a dealer in Abrasives in Grinding Wheels and declared their turnover for the year 1998-1999. For the year 1998-1999, the assessment order was passed on 11.12.2000. A pre-revision notice dated 5.4.2004 was issued to the petitioner on the ground that a sum of Rs. 10,12,510/- being sales made to 100% export oriented units located in other states has escaped assessment turnover. By the impugned revised proceedings dated 23.8.2004, the respondent determined a sum of Rs. 1,11,336/- as tax due from the petitioner by making the assessment u/s 9(2) of the CST Act 1956 read with Section 16(1)(a) of the TNGST Act.

2. Challenging the revised assessment order dated 23.8.2004, petitioner filed writ petition contending that the revision of assessment u/s 9(2) of the CST Act 1956 read with Section 16(1)(a) of the TNGST Act was clearly barred by limitation since the pre-revision notice was issued on 5.4.2004 and the revised assessment order was made on 23.8.2004, which is after the expiry of five years.

3. Learned counsel appearing for the petitioner submitted that the revised assessment proceedings dated 23.8.2004 issued by the respondent for the assessment year 1998-1999 is statutorily barred by limitation and the respondent has no jurisdiction to revise the assessment beyond the period of five years from the expiry of the year of which the tax relates, the impugned revised assessment proceedings is not sustainable. Further it was contended that when the respondent has no jurisdiction to revise the assessment, the existence of alternative remedy of filing appeal is not a bar in invoking the writ jurisdiction.

4. Learned Government Pleader Mr. A.R. Jayaprathap appearing for the respondent submitted that as against the impugned revised assessment proceedings the writ petitioner ought to have approached the authorities by filing objection and since there is efficacious alternative remedy available under the statute, the writ petition is not maintainable. It was also submitted that the respondent has rightly issued the revised assessment proceedings u/s 16 of the TNGST Act and the same is well within the time.

5. The point falling for consideration is, whether the impugned revised assessment proceedings is within the prescribed time or not?

6. Section 16(1)(a) of the TNGST Act, 1959, which is the relevant provision, reads as under:

Section 16. Assessment of escaped turnover. - (1) (a) Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of sub-section (2) at any time within a period of five years from the expiry of the year to which the tax relates, determine to the best of its judgment the turnover which has escaped assessment and assess the tax payable on such turnover after making such inquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such assessment.

Section 16(1) deals with the revised assessment of escaped turnover. By a reading of the above provision it is clear that where whole or any part of the turnover of business of a dealer has escaped assessment of tax, the assessing officer has power to revise the assessment at any time within a period of five years from the expiry of the year to which the tax relates. In the present case, the assessment year is 1998-1999 and the period of five years expires on 31.03.2004. The respondent has issued the impugned revised assessment proceedings on 23.8.2004 and the revised assessment proceedings is well beyond the period of five years and hence the revised assessment proceedings is clearly barred by limitation.

7. On behalf of the respondents, it was submitted that Section 16(1)(a) of the TNGST Act was later amended by Amended Act 22 of 2002 with effect from 01.07.2002 and as per the amended provision the impugned notice is well within the period of limitation. The amended provision of Section 16(1)(a) of the TNGST Act, 1959 (amended Act 22 of 2002) reads as follows:

Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of sub-section (2) at any time within a period of five years from the (date of order of the final assessment by the assessing authority) determine to the best of its judgment the turnover which has escaped assessment and assess the tax payable on such turnover after making such inquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such assessment.

By reading of the provision, it is clear that the limitation period commences from the date of final assessment order. The said provision came into effect prospectively and not retrospectively. There is nothing in the amended provision Section 16(1)(a) that the same was intended to operate retrospectively. Therefore the respondent cannot resort to the amended provision Section 16(1)(a) to sustain the impugned revised proceedings of assessment.

8. In the case on hand, since the assessment order was passed on 11.12.2000, much prior to the amended provision came into effect i.e., 1.7.2002, the limitation of five years cannot be calculated from the date of the final order of assessment based on the amended provision Section 16(1)(a). The assessment year in question is 1998-1999. Hence, the five year limitation ends by 31.3.2004 and the revised assessment proceedings dated 23.8.2004 issued beyond the period of five years is barred by limitation.

9. Coming to the next contention regarding the alternative remedy, the High Court would not normally exercise its jurisdiction when an alternative remedy is available under the statute and the same can be exercised only when the order is lacking jurisdiction or it is statutorily barred by limitation. The petitioner has established that the revised assessment proceedings issued u/s 16 of TNGST Act is statutorily barred by limitation and therefore the writ petition cannot be dismissed on the ground of alternative remedy.

10. A Division Bench of this Court in M.U.A. Armugaperumal and Sons Vs. Additional Commercial Tax Officer (FAC), had also taken the view that when the assessment order was issued prior to the amendment to Section 16(1)(a) of TNGST Act, amended provision cannot be applied to the said assessment. The Division Bench also held that when the revised assessment order was clearly barred by limitation it is a fit case for interference under Article 226 of the Constitution of India. The same view was taken by another Division Bench of this Court in W.A. No. 838 of 2009 (The Deputy Commercial Tax Officer, Tirupur (North) Circle Vs. M/s. Baba Knitters) dated 28.10.2010.

11. So far as the other Judgment of the Division Bench of this Court in W.A. (MD) No. 136 of 2008 dated 19.06.2012, to which one of us (R. Banumathi, J.) was a member, the Division Bench has applied the amended provision of Section 16(1)(a). In the said case, the assessment order was passed on 30.4.2004, which is much after coming into force of the amending Act viz., 1.7.2002 and the said

Judgment is clearly distinguishable on facts. In the result, we hold that the revised assessment proceedings dated 23.8.2004 is barred by limitation u/s 16(1)(a) of TNGST Act and the same is quashed and the writ petition is allowed. However, there is no order as to costs. Consequently, the connected miscellaneous petition is closed.