(2008) 04 MAD CK 0048

In the Madras High Court

Case No : W.A. No. 3243 of 2004 and WAMP No. 6107 of 2004

M.U.A. Armugaperumal and Sons — APPELLANT

Vs

Additional Commercial Tax Officer (FAC) — RESPONDENT

Date of Decision : 24-04-2008

Acts Referred:

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

Citation : (2008) 16 VST 188

Hon'ble Judges : P.P.S. Janarthana Raja, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : R. Venkatraman for T. Ramesh Kutty, for the Appellant; Haja Naziruddin, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

P.P.S. Janarthana Raja, J.—The above appeal is filed against the order dated July 30, 2004 See [2006] 144 STC 90 made in W.P. No. 32

of 2004.

2. The appellant herein had filed the writ petition seeking to quash the proceedings in Pro.TNGST No. 913553/95-96 dated June 1, 2004 relating

to the assessment year 1995-96.

3. The facts of the case proceed as follows:

The appellant is a manufacturer and exporter of cotton fabrics at Chatrapatti. The assessment year is 1995-96. The appellant is an assessee on the

file of the respondent registered under the provisions of the Tamil Nadu General Sales Tax Act, 1959 and the Central Sales Tax Act, 1956. During

the assessment proceedings, the respondent verified the books of account on February 7, 1997 and fixed the total and taxable turnover as Rs.

19,86,04,287 and Rs. nil, respectively. Since the taxable turnover was nil, no intimation was sent as regards the completion of the original

assessment proceedings. Later a pre-revision notice dated April 14, 2004 had been issued on the basis of the information received from the

Commercial Tax Officer, Harbour-II, Assessment Circle, Chennai, that the appellant had effected sales of REP licence for Rs. 10,46,359 from

April 1, 1995 to March 31, 1996 and directed the appellant to send objection, if any, to the proposal. The appellant immediately sent an objection

dated April 27, 2004 to the respondents submitting that the revision of assessment u/s 16(1)(a) of the TNGST Act was clearly barred by limitation

on the ground that pre-revision notice was issued on April 14, 2004, which is after the expiry of five years. After considering the objection, the

respondent has completed the revised assessment for the year 1995-96, which is as follows:

Total turnover for the year 1995-96 Rs. 10,46,359

Taxable turnover determined for the year 1995-96 = Rs. 10,46,359 x 8/100

Tax due Rs. 83,709

Tax paid nil

Balance Rs. 83,709

Surcharge : Surcharge at 15 per cent is also levied

for the year 1995-96.

Surcharge due Rs. 12,556

Surcharge paid Rs. nil

Balance Rs. 12,556

4. Aggrieved by the revised assessment order, the appellant filed the writ petition in W.P. No. 32 of 2004 challenging the revised order made by

the respondent on the ground that it is ex fade, illegal, barred by limitation and without any basis and justification. After hearing, the learned single

judge has dismissed the writ petition on July 30, 2004 See [2006] 144 STC 90 by holding as follows: (page 92 of 144 STC)

In result,

(i) The above writ petition does not merit admission for the foregoing reasons assigned, but becomes only liable to be dismissed at the admission stage itself and is dismissed accordingly.

(ii) However, the learned senior Counsel for the petitioner has a request to be made with the court that since he has made an attempt before this

court under the constitutional provisions in filing the above writ petition, much time is lost and would crave permission to elongate the time for

preferring the regular appeal before the appellate authority. Since it is a reasonable request made on the part of the learned senior Counsel for the

petitioner, the lower appellate authority is hereby directed to entertain the appeal, provided the same is preferred within thirty days from the day

that this order copy is made ready.

(iii) The appellate authority is further directed to consider and pass such interim orders which are necessary in the circumstances of the case even

during the pendency of the appeal, if sought for, in strict observance of the law, rules and procedures.

However, in the circumstances of the case, there shall be no order as to costs.

Aggrieved by that order, the appellant has filed the present appeal.

5. The learned senior Counsel appearing for the appellant has submitted that the revision of assessment passed by the respondent for the

assessment year 1995-96 is statutorily barred by limitation. Further it was contended that when the respondent has no jurisdiction to revise the

assessment the existence of alternate remedy of filing appeal is not a bar in approaching this court. It is therefore submitted that the impugned order

passed by the respondent is not in accordance with law.

6. The learned Government Pleader appearing for the respondent submitted that the appellant has effected the sales of REP licence for Rs.

10,46,359 from April 1,1995 to March 31,1996 and hence, there is an escaped turnover u/s 16 of the TNGST Act. It is further contended that

respondent has correctly invoked the provision of Section 16 of the Act and it is well within the time. It is also further submitted that there is an

alternative remedy available under the statute. Without exhausting the same, the appellant has approached the court by filing the writ petition and,

therefore, the learned single judge is right in dismissing the writ petition and the same should be confirmed.

7. Heard the learned Counsel appearing on either side. The only point for consideration is whether the revised assessment is passed within the time

prescribed or not. Section 16(1)(a) of the TNGST Act, 1959, is the relevant provision, which 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 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 enquiry as it

may consider necessary and after giving the dealer a reasonable opportunity to show-cause against such assessment.

8. The above section deals with the revised assessment of escaped turnover. From a bare reading of the above provision it is clear that if for any

reason, the 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

1995-96 and the period of five years expires on March 31, 2001. However, the assessing officer has power to reassess on or before March 31,

2001. But, the pre-revision notice was issued only on April 14, 2004. The appellant has also sent an objection on April 17, 2004 and the revised

assessment was finally passed on June 1, 2004. From the above facts, it is very clear that the notice issued on April 14, 2004 and the revised

assessment order passed u/s 16 of the Act on June 1, 2004, are statutorily barred by limitation.

9. It is also brought to our notice that Section 16(1)(a) of the Act was later amended by Amended Act 22 of 2002 with effect from July 1, 2002.

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 enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show-cause against such assessment.

10. From a bare 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 amendment made to Section 16(1)(a) that the same was

intended to operate retrospectively. There is no dispute regarding the same. Therefore the amended provision is not relevant. There is also no

dispute that the revision of assessment is barred by limitation as early as on March 31, 2001, which is much before the introduction of amended

provision of Section 16(1)(a) by Amendment Act of 22 of 2002, which came into effect from July 1, 2002. Coming to the next contention

regarding alternative remedy, normally under Article 226 of the Constitution of India, the High Court should not exercise its writ 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 appellant has established the revision of assessment made u/s 16(1)(a) of the Act is statutorily barred by limitation and

therefore, it is a fit case for the interference under Article 226 of the Constitution of India. Further we are also of the view that the revised

assessment made by the respondent is illegal, wrong, without basis and justification.

11. For the foregoing reasons, we are of the view that the revised assessment passed by the appellant is statutorily barred by limitation u/s 16(1)(a)

of the TNGST Act. Hence, we set aside the order of the learned single judge and the writ appeal is allowed. No costs. Consequently WAMP No.

6107 of 2004 is closed.