(2011) 09 MAD CK 0152

In the Madras High Court

Case No : Writ Petition No. 16947 of 2004

The United Nilgiri Tea Estates Co. Ltd., No. 23-24 Race Course Road Coimbatore	APPELLANT
Vs	
The Commercial Tax Officer Trichy Road Circle Coimbatore-18	RESPONDENT

Date of Decision : 23-09-2011

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 16, 16(1)

Citation : (2011) 09 MAD CK 0152

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : Hema Muralikrishnan, for the Appellant; B. Anandan, Government Advocate (T), for the Respondent

Final Decision : Allowed

Judgement

M. Jaichandren

1. This writ petition has been filed praying for the issuance of a writ of Certiorari to call for and quash the pre-revision notice, dated 31.5.2004, issued by the respondent in his proceedings, in TNGST No. 1880020/97-98.

2. The impugned pre-revision notice, dated 31.5.2004, issued by the respondent, relates to the assessment year 1997-1998. The petitioner is a tea plantation and it is registered on the files of the respondent, as per the provisions of the Tamil Nadu General Sales Act, 1959. The petitioner, apart from effecting local sales and direct export of tea, had also effected sales of tea through recognised auction centres at Coonoor and Coimbatore. The auctioneers are also registered dealers. In respect of the local and inter-state sales effected by the auctioneers, the appropriate taxes are collected and remitted to the authorities concerned. However, in respect of the sales to exporters, the State Government, by a notification in CT and RE/2146111/82 G.O.Ms.No. 876/CT and RE, dated 29.7.1992, had granted exemption on the sales of tea to exporters at the auction

centres at Coonoor and Coimbatore. Accordingly, the petitioner''s original assessment, for the assessment year 1997-1998, had been completed by the respondent granting exemption on the tea sold through the auction centres at Coonoor and Coimbatore. While so, the respondent had issued the impugned pre-revision notice to the petitioner proposing to disallow the claim of exemption on the petitioner''s turnover relating to the sale of tea to exporters at the auction centres at Coonoor and Coimbatore.

3. The learned counsel appearing on behalf of the petitioner had submitted that the impugned notice has been challenged on the ground that it is barred by limitation. It has been pointed out that, u/s 16(1) of the Tamil Nadu General Sales Tax Act, 1959, an assessment can be reopened, within a period of five years from the expiry of the assessment year to which it relates. Accordingly, the time limit prescribed for the reopening of the assessment, for the assessment year 1997-1998, had expired, on 31.3.2004. However, the respondent had issued the impugned pre-revision notice, dated 31.5.2004, after the period of limitation had expired. As such, the impugned pre-revision notice is time barred and therefore, it has been issued by the respondent without having the jurisdiction to do so.

4. The learned Government Advocate appearing on behalf of the respondent had not disputed the submissions made by the learned counsel appearing on behalf of the petitioner.

5. In view of the relevant provisions contained in Section 16 of the Tamil Nadu General Sales Act, 1959, it is clear that the impugned pre-revision notice has been issued by the respondent beyond the period of limitation prescribed therein. In such circumstances, this court finds it appropriate to set aside the impugned pre-revision notice, dated 31.5.2004, issued by the respondent. Accordingly, the writ petition stands allowed. No costs.

