(2011) 08 MAD CK 0020

In the Madras High Court

Case No : Writ Petition (MD) No. 8289 of 2007 and M.P. (MD) No. 1 of 2007

Tvl. Silver Spring Spinner (India) APPELLANT

Vs

State of Tamilnadu RESPONDENT

Date of Decision : 11-08-2011

Acts Referred:

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

Citation : (2011) 46 VST 359

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : Mr. K. Vadivelu, for Md. Ibrahim Ali, for the Appellant; Mr. D. Muruganandam, Addl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

The Honourable Mr. Justice Vinod K. Sharma

1. The Petitioner has approached this Court, with a prayer for issuance of a writ, in the nature of certiorari, to quash the order, dated 29.06.2007,

passed by the Commercial Tax Officer-I.

2. The only ground of challenge is that the impugned order of re-assessment is barred by limitation.

3. In support of this contention, the Petitioner submitted that the assessment for the year 1999-2000 was finalized on 12th November 2004. It was

only on 22th April 2005, the Petitioner was issued a notice u/s 16(1) of the Tamil Nadu General Sales Tax Act 1959, for re-assessment.

4. Section 16(1) of the Tamil Nadu General Sales Tax Act, reads as under:

Section 16, Assessment of escaped turnover:(1)(a) Where, for any reason, the whole or any part of the turn over 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.

Section 16(1)(b) Where, for any reason, the whole or any part of the turnover of business of a dealer has been assessed at a rate lower than the

rate at which it is assessable, the assessing authority may, at any time within a period of five years from the [date of order of the final assessment by

the assessing authority], reassess the tax due after making such enquiry as it may consider necessary and after giving the dealer a reasonable

opportunity to show case against such re-assessment.

5. The contention of the Learned Counsel for the Petitioner is that the section was amended with effect from 1.7.2002, which is not retrospective.

The reassessment notice issued to the Petitioner, therefore, was barred by limitation, having been issued on 22nd April 2005, whereas the period

of five years for assessment year 1999-2000 expired on 31.03.2005.

6. In support of this contention, the Learned Counsel for the Petitioner placed reliance on the judgment of the Hon''ble Division Bench of this

Court, in the case of M/S. M.U.A. Arumugaperusam and sons, Exports, 636/15, Rajapalayam Road, Chatrapatti-626 102 v. The Additional

Commercial Tax Officer (FAC) in W.A. No. 3243 of 2004, decided on 24.04.2008, wherein this Court was pleased to lay down as under:

7. 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 01.07.2002.

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

From a bare reading of the provision, it is clear that the limitation period commences from the date of final assessment order. The said

provisioncameintoeffectprospectivelyandnotretrospectively.Thereis 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. The reisalsono dispute that

there vision of assessment is barred by limitation as early as on 31.03.2001, 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 01.07.2002. 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 a real so of the view that there vised assessment made by the

Respondent is illegal, wrong, without basis and justification.

7. The Petitioner also placed reliance on the judgment of this Court in W.P. No. 15173 of 2004 M/S. Saba Knitters, No. 690 P.N. Road,

Tirupur-641 602. v. The Deputy Commercial Tax Officer, Tirupur (North) Circle, Tirupur], decided on 04.08.2005, wherein this Court was

pleased to lay down as under:

The Petitioner puts in issue the notice, dated 31.03.2004 made by the Respondent for the reopening of the assessment for the assessment year

1996-97 on the premised that the said notice is barred by limitation. It is the contention of the Petitioner that during the relevant period, the

Statutory provision was that a revisional proceedings can be initiated within a period of five years from the date of expiry of the year, to which the

tax relates. So far as this case is concerned, the assessment year is 1996-97 and there visional notice has been issued on31.03.2004. Hence, it is

hopelessly barred by limitation, which fact has been verified by the learned

Government Advocate, who submitted that the notice, which is

impugned in this writ petition, dated31.03.2004 is barred by limitation.

In view of the submission made by the Learned Counsel on either side, this writ petition is allowed by setting aside the impugned order dated

31.03.2004, as barred by limitation. No. costs. Consequently, the connected Miscellaneous Petition is closed.

8. On consideration, I find No. force in the contentions, raised by the Learned Counsel for the Petitioner. The cases on which reliance has been

placed, are the cases where limitation to reopen the assessment had already expired, before the amendment came into force, and it was in that

situation, that this Court was pleased to hold, that the notice issued to the Petitioner, was barred by limitation, as the amendment did not have any

retrospective effect.

9. In this, the period for reassessment had not expired the date of amendment.

10. Admittedly, the period, in the case of the Petitioner, even as per unamended provision was to expire only on 31th March 2005. The section

was amended with effect from 1.7.2002, therefore, it was open to the Department to reopen the re-assessment, as per amended provision. In this

case, the starting point of limitation was to be taken from the date of the order of re-assessment, and not the year of the assessment.

11. It is not disputed that the assessment order, in case of the Petitioner, was passed on 12.11.2004, whereas, the notice for re-assessment was

issued within the period 5/6 months of the order of the assessment. This cannot be said to be barred by limitation, nor it can be said that the

amendment has been applied retrospective.

12. The reading of the Hon''ble Division Bench judgment, on which, reliance was placed by the Learned Counsel for the Petitioner, also shows that

the reason for holding the notice to be barred by limitation was that the period of limitation had expired before coming into force of the amended

provision of the Act.

13. The judgments relied upon, therefore, cannot advance the case of the Petitioner.

14. No ground is, therefore, made out to interfere with the impugned order. No. merit. ""Dismissed"".

15. Consequently, connected Miscellaneous Petition is closed.

16. No. costs.

