IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2020

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. Nos. 26427 to 26429 of 2018
and
W.M.P. Nos. 30702, 30695 and 30700 of 2018

W.P. No. 26427 of 2018:-

United Processors
Represented by its Partner
B.Sudarsan
S/o. M.Dhanapal
No.2/183, Kulathukadavu Bye Pass Road
Kumarapalayam. ... Petitioner

-vs-

The State Tax Officer
Sankari. ... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondent pertaining to the impugned order dated 23.03.2018 passed in TNGST 3223580/2002-03 and quash the same.

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For Petitioner : Mr. B.Raveendran

For Respondent : Mr. A.N.R.Jayaprathap
Government Advocate

W.P. No. 26428 of 2018:-

United Processors
Represented by its Partner
B.Sudarsan
S/o. M.Dhanapal
No.2/183, Kulathukadavu Bye Pass Road
Kumarapalayam. ... Petitioner

-vs-

The State Tax Officer
Sankari. ... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondent pertaining to the impugned order dated 23.03.2018 passed in TNGST 3223580/2003-04 and quash the same.

For Petitioner : Mr. B.Raveendran

For Respondent : Mr. A.N.R.Jayaprathap
Government Advocate

W.P. No. 26429 of 2018:-

United Processors
Represented by its Partner
B.Sudarsan
S/o. M.Dhanapal
No.2/183, Kulathukadavu Bye Pass Road
Kumarapalayam. ... Petitioner

-vs-

The State Tax Officer
Sankari. ... Respondent

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Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondent pertaining to the impugned order dated 07.05.2018 passed in TNGST 3223580/2004-05 and quash the same.

For Petitioner : Mr. B.Raveendran

For Respondent : Mr. A.N.R.Jayaprathap
Government Advocate

COMMON ORDER
(through video conference)

Heard Mr. B.Raveendran, Learned Counsel for the Petitioner and Mr. A.N.R.Jayaprathap, Learned Government Advocate appearing for the Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Respondent by Order Nos. TNGST 3223580 / 2002-03 dated 23.03.2018, TNGST 3223580 / 2003-2004 dated 23.03.2018 and TNGST 3223580 / 2004-2005 dated 07.05.2018 had re-assessed the liability of the tax in connection with the use of chemicals in printing works for the assessment years 2002-2003, 2003-2004 and 2004-2005 under the Tamil Nadu General

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Sales Tax Act, 1959 (hereinafter referred to as 'the TNGST Act' for short) in respect of the Petitioner, who had received the copies of those orders on 15.05.2018, 14.04.2018 and 14.05.2018 respectively. The Petitioner was entitled to prefer appeal against those orders under Section 31 of TNGST Act, within a period of 30 days from the date of their receipt before the Appellate Authority, who has been empowered to condone delay in filing such appeal for an extended period of 30 days, if sufficient cause for not preferring appeal within that period is made out. However, the Petitioner did not prefer any such appeal before the Appellate Authority, but has instead filed these Writ Petitions on 03.10.2018 challenging the orders passed by the Respondent beyond the maximum limitation period of 60 days from the date of receipt of copy of those orders.

3. The Hon'ble Supreme Court of India in ***Assistant Commissioner (CT) LTU, Kakinada -vs- Glaxo Smith Kline Consumer Health Care Limited*** (Order dated 06.05.2020 in Civil Appeal No. 2413 of 2020) has emphatically laid down that the High Court in the exercise of powers under Article 226 of the Constitution of India ought not to entertain Writ Petition assailing the order passed by a Statutory Authority which was not appealed against within the maximum period of limitation before the concerned Appellate Authority. A

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factual distinction is sought to be made by the Learned Counsel for the Petitioner for restricting the applicability of that binding decision only to the cases where appeal had been preferred before the Appellate Authority but declined to be entertained as time-barred, unlike the present one in which the Petitioner has directly approached this Court to challenge the impugned order after the maximum period of limitation for filing appeal has lapsed. It is not possible to accept the said contention inasmuch as a person, who has preferred appeal before the Statutory Authority, cannot be more blameworthy than one who has not at all preferred such appeal. The obvious rationale behind the governing dictum is that where the maximum period of limitation prescribed in the statute for preferring appeal against an order before the Appellate Authority has lapsed, it is not permissible to circumvent the legislative intent manifested in that bar created by resorting to thereafter invoke the discretionary powers of the High Court under Article 226 of the Constitution. It is immaterial whether or not such time-barred appeal had been preferred to the Appellate Authority before filing of the Writ Petition.

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4. Despite this Court highlighting that embargo to delve into the merits of the controversy involved in the matter, Learned Counsel for the Petitioner persistently ventilated the grievance that the impugned orders are without

jurisdiction inasmuch as the re-assessment has not been completed within the time limit of five years from the date of order of the final assessment made by the assessing authority stipulated in Section 16 of the TNGST Act, and relies on the decision of this Court in ***Tvl. Victus Dyeings -vs- The Assistant Commissioner (ST)*** (Order dated 29.07.2019 in W.P. Nos. 20295 of 2019 etc. batch) for support in that regard. On a bare reading of the factual matrix in that decision, it would reveal that the commencement of the proceedings for re-assessment of tax under the Tamil Nadu Value Added Tax Act, 2006, had taken place after the period of six years from the date of assessment elapsed, unlike the instant case where the notices for re-assessing tax had been issued on 11.03.2005, 17.03.2005 and 19.05.2006 within the stipulated time from the respective dates of order of final assessment made by the assessing authority for the years 2002-2003, 2003-2004 and 2004-2005. In this context, reference has to be made to the decision of the Constitution Bench of the Hon'ble Supreme Court of India in ***Padmasundara Rao -vs- State of Tamil Nadu*** [(2002) 3 SCC 533], where it has been ruled as follows:-

> *"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as*

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*though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in **Herrington -vs- British Railways Board** [(1972) 2 WLR 537 [Sub nom **British Railways Board -vs- Herrington** (1972) 1 All ER 749 (HL)]]. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."*

At the same time, it must be recapitulated that the Hon'ble Supreme Court of India in ***Sales Tax Officer -vs- Sudarsanam Iyengar & Sons*** [(1969) 2 SCC 396] has considered the same contention arising out of the provisions in Rule 33 of the Travancore-Cochin General Sales Tax Rules, 1950, which are in *pari materia* with Section 16 of the TNGST Act, and has enunciated the law as follows:-

"..... Our attention has been invited to the appropriate dictionary meaning of the word "determine" which is "to settle or decide -- to come to a judicial decision" (Shorter Oxford English Dictionary). It is suggested that the word "determine" was employed in Rule 33 with a definite intention to set the limit within which the final order in the matter of assessment should be made, the limit being three years. We find it difficult to accept

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that in the context of sales tax legislation the use of the words "proceed to assess" and "determine" would lead to different consequences or result. In this connection the words which follow the word "determine" in Rule 33 must be accorded their due signification. The words "assess the tax payable" cannot be ignored and it is clearly meant that the assessment has to be made within the period prescribed. Assessment is a comprehensive word and can denote the entirety of proceedings which are taken with regard to it. It cannot and does not mean a final order of assessment alone unless there is something in the context of a particular provision which compels such a meaning being attributed to it. In our judgment despite the phraseology employed in Rule 33 the principle which has been laid in other cases relating to analogous provisions in sales-tax statute must be followed as otherwise the purpose of a provision like Rule 33 can be completely defeated by taking certain collateral proceedings and obtaining a stay order as was done in the present case or by unduly delaying assessment proceedings beyond a period of three years."

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The aforesaid binding ruling has been followed by the Full Bench of this Court in ***M.Gulam Mohideen -vs- Commissioner of Agricultural Income Tax Board of Revenue*** (AIR 1978 Mad 327), where it has been held as follows:-

> *"10. In **State of Punjab -vs- Tarachand Lajpat Raj*** [19 STC 493] *the Court was considering the scope of sub-S.(4) and (5) of S.11 of the Punjab General Salestax Act, 1948. It was held in that case that if a dealer furnishes a return under Sub S(1) or when a notice is issued to him under S.11(2) by the assessing authority within the prescribed period, the assessment can be finalised subsequently even after the expiry of the period and no question of limitation would arise. In **State of Punjab -vs- Muralidhar Mahabir Parshad*** [21 STC 29]*, it was again reiterated that the period of limitation of three years for making the assessment under sub S.(4) and (5) of S.11 of the Punjab General Salestax Act was only for initiating assessment proceedings and that if the proceedings had been initiated within the period prescribed in the said section the proceedings whenever completed will be valid.*
>
> ....

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13. Further, the word 'revise' in S.34(2) is a comprehensive expression and it does not merely denote the passing of the order in revision. The word 'revise' cannot be understood to mean pass an order in 'revision'. Revision is a legal process and does not denote the final act of passing an order terminating the legal process. The legal process consists of various steps such as calling for the records of the proceedings, making an enquiry by the revisional authority or causing an enquiry to be made thereon, and passing final orders thereon as the revisional authority thinks fit. Therefore, the entire process commencing from the calling of the records and ending with the passing of the final order has been termed as revision in the said Section. Each one of the steps in the process is a revisional process. Therefore, if any one of the steps in the process has been initiated within the period of limitation, there is no further limitation on the exercise of the power."

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The proposition canvassed by the Learned Counsel for the Petitioner, which is in blatant contravention of these authoritative pronouncements holding the field, cannot be countenanced.

5. It has been clearly explained in the impugned orders itself that though in the order dated 01.09.2006 in the earlier Writ Petitions in W.P. Nos. 15355 and 15356 of 2005 filed by the Petitioner challenging the notices to re-assess the tax, this Court had permitted to proceed further in accordance with law, the assessing authority was unable to do so on account of another order of interim stay passed by this Court in the Writ Petition in W.P. No. 21601 of 2004 filed by Dyers Association of Tirupur, till it had been finally decided by order dated 21.07.2017 in favour of the Respondent. This would go to show that the Respondent could not be faulted for the time taken for the finalization of the proceedings.

6. It is brought to notice by the Learned Government Advocate appearing for the Respondent that the Division Bench of this Court in ***State of Tamil nadu -vs- Tex-in-Printers*** (Order dated 04.10.2013 in Tax Case (Revision) No. 49 of 2009) has reiterated that after introduction of Section 3-B and the amendment made to the definition of 'sale' in Section 2(n)(ii) of the TNGST Act, the transfer of goods involved in works contract would amount to 'sale' and the entire turnover has become assessable to tax and that the same view has been expressed by another Division Bench of this Court in ***State of Tamil Nadu -vs- Tvl. Tamil Nadu Co-operative Textile Processing Mills Limited***

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(Order dated 25.06.2019 in Tax Case No. 2319 of 2008), meaning thereby that the Petitioner cannot have any grievance for the re-assessment of tax liability based on that settled question of law.

In the result, these Writ Petitions, which lack merits, are dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

30.11.2020

Maya/kv

Index: Yes/No

Note: Issue order copy by 02.12.2020.

To

The State Tax Officer
Sankari.

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P.D. AUDIKESAVALU, J.

Maya

W.P. Nos. 26427 to 26429 of 2018

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Dated: 30.11.2020