

MADRAS HIGH COURT Judgments in VAT CST GST

by Sampathkumar V V

Demand and recovery: It is settled law that recovery of tax in advance by inspecting officials (Enforcement Wing) is illegal. Petitioner relied on the case reported in 1993(4) MTCR 563. The Court, after having heard the rival submissions, is of the considered view that the impugned demand made by the respondent is illegal without there being an assessment order. Stating so in the above lines, the impugned demand, dated 17.04.2017 issued by the first respondent was quashed and the Writ Petition was allowed. **M/s. Sri Ganesh Lubricants, Vs. CTO, Thuraiyur Assessment Circle. W.P.(MD) No. 10576 of 2017 DATED: 26.11.2020**

Actionable Claims: Definition of the term “goods” under Section 2(52) of the CGST Act, 2017 does not violate any constitutional provision nor it is in conflict with the definition of goods given under Article 366(12). The submission of the petitioner that actionable claims have been artificially included in the definition of goods cannot be accepted. Stating so, the writ petition is dismissed. **SKILL LOTTO SOLUTIONS PVT LTD Vs UNION OF INDIA & ORS. (SC) WP (Civil) 961 of 2018 dated 03/12/2020**

Revision and Limitation: In the present case, notices initiating proceedings for revision of assessments have admittedly been issued on 17.02.2017, before the expiry of the period of limitation. Held that it was incumbent on the part of the Officer to have tabulated the materials filed by the assessee in the first instance and compare the same with the requirements of the applicable Rule(s) and thereafter come to a conclusion as to whether the Rule(s) stands satisfied. This exercise has not been done and the Officer merely rejects the petitioner’s contention on the assumption that there is a failure to produce documentary evidence in support of the claim of sales/returns and hence, the impugned assessments are set aside with directions. **M/s.Kurlon Enterprises Limited Vs. STO, Thiruvallikeni Assessment Circle, W.P. Nos.2793, 2797, 2798 and 2800 of 2020 DATED: 02.11.2020**

Natural justice: Petitioner challenges orders of assessment passed for the periods 2015-16, 2016-17 and 2017-18, all dated 14.11.2019 specifically on the ground of violation of principles of natural justice, since no personal hearing has been granted as prayed for in objection dated 05.08.2019. This factual position is not disputed by the learned counsel for the Revenue. Hence, the orders of assessment are set aside with directions. **M/s.Alkraft Thermo Technologies P Ltd, Vs AC (ST), Ambattur IE Assessment Circle, W.P. Nos.530, 533 and 535 of 2020 DATED: 05.11.2020**

opportunity of personal hearing: The main ground of challenge in this WP is violation of principles of natural justice as admittedly there has been no personal hearing afforded to the petitioner prior to completion of assessment. In the light of the admitted position that the petitioner has not been afforded an opportunity of personal hearing prior to completion of assessment, the impugned order of assessment is set aside with directions. **Pulkit Metals Private Limited Vs AC (ST)(FAC) Villupuram – II W.P. No.15948 of 2020 DATED: 10.11.2020**

Appeal: The petitioner challenged the order of assessment dated 14.02.2018 in W.P.No.24329 of 2019, which writ petition came to be disposed on 22.08.2019 granting liberty to the petitioner to pursue alternate remedy. No specific time limit was set by this Court for filing of the appeal. The order of this Court was received by the petitioner on 27.12.2019. The statutory appeal was forwarded by registered speed post on 28.01.2020 and received by Respondent on 30.01.2020 involving delay by a day. When this matter had come up for admission on 04.11.2020, the petitioner was put to terms and directed to pay 50% of the penalty, which has been complied with as conveyed under memo dated 17.11.2020. In this background, the Court directed that the petitioner’s appeal may be directed to be heard by Respondent on merits, once re-presented. **Tvl.Rabbany Elelctricals Vs The ADC (ST), Cuddalore W.P.No.15829 of 2020 DATED: 24.11.2020**

Remand directions: The main ground raised and agitated relates to the non-consideration of certain materials stated to have been filed by the petitioner in support of its claim of discount and other income relating to fitting and installation charges. The Court states that notwithstanding whether the supporting material had been filed pending assessment, a compilation of documents in two volumes have been circulated both to the Court as well as to the Revenue counsel. In view of this, the AO is directed to verify the particulars filed now and redo the assessment insofar as it relates to issue of discount and other income (fittings and installation charges) alone. **M/s.G.V.Audio Vision Pvt. Ltd., Erode Vs STO, Mettur Road Assessment Circle W.P. No.14724 of 2020 DATED: 27.11.2020**

Merger of assessment: The revision of an assessment order for escapement of any turnover or tax, alone is appealable before the AAC (CT) and not any order of rectification passed u/s 55 of the Act. The Tribunal dismissed the appeal petition and confirmed the orders of the AAC. Aggrieved by this, when a Writ petition is filed the High Court, having heard the learned counsel for the parties, held that the Original Assessment order does not merge with the Rectification Order passed by the AO and therefore, do not find any reason to interfere with the orders of AAC and Tribunal. **M/s.Vishnu Cement Ltd., Vs. The State of Tamil Nadu. Tax Case No.95 of 2015 DATED: 10.11.2020**
