BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.03.2015
CORAM:
THE HONOURABLE DR. JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR. JUSTICE V.S.RAVI

W.A.(MD)Nos.694 to 699 of 2014
and
M.P.(MD)Nos.1 of 2014 (6 nos.)

BHARAT HEAVY ELECTRICALS LTD.
REP.BY ITS ADDITIONAL GENERAL
MANAGER/FINANCE M.THIRUNEELAKANDAN
TIRUVERUMBUR TRICHY-620 014.
... APPELLANT in WA(MD) No.694 of 2014

BHARAT HEAVY ELECTRICALS LTD.
REP.BY ITS SENIOR MANAGER/FINANCE MS.S.P.
NITHYA TIRUVERUMBUR TRICHY-620 014.
... PETITIONER in WA(MD) No.695 to 699 of 2014

-VS-

THE ASSISTANT COMMISSIONER (CT)
TIRUVERUMBUR ASSESSMENT CIRCLE TRICHY- 620 020.
... RESPONDENT in all the Writ Appeals

These Writ Appeals filed under clause 15 of the letter patent
Prayer in WA(MD) No.694 of 2014:
to against the order and Judgment dated 25.04.2014 delivered by this court in W.P.(MD)No.2075 of 2013.

Prayer in WP(MD). 2075/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, or any other appropriate writ, order or direction under Article 226 of the Constitution of India call for the records on the files of the Respondent herein in his CST No.239393/2006-07 dated 17.12.2012 and to quash the same with the direction to re-do the assessment in accordance with the finding given by the Tamil Nadu Sales Tax APpellate Tribunal, Additional Bench Madurai in its MTA No.656/92 dated 7.11.2005 in so far as it relates to the claim of exemption under Section 6(2)(b) of the CST Act 1956.

Prayer in WA(MD) No.695 of 2014:
to against the order and Judgment dated 25.04.2014 delivered by this court in W.P.(MD)No.8882 of 2013.

Prayer in WP(MD). 8882/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARIFIED MANDAMUS, direction under Article 226 of the Constitution of India call for the records on the files of the respondent herein his CST 239383/2007-08 dated 29.4.2013 and to Quash the same with the direction to redo the assessment after providing an opportunity to the petitioner to rectify the defects in the C declatation forms relating to direct inter-State sales and relates to the claim of exemption under Section 6(2)(b) of the CST Act, 1956 or pass such further or other orders.

Prayer in WA(MD) No.696 of 2014:
to against the order and Judgment dated 25.04.2014 delivered by this court in W.P.(MD)No.10205 of 2013.

Prayer in WP(MD). 10205/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus or any other appropriate writ order or direction under article 226 of the constituation of India to call for the records relating to CST 239383/2008-09 dated 31.5.2013 and to quash the same with the direction to re do the assessment after providing an opportunity to the petitioner to rectify the defects in the C declaration forms relating to inter-state sale and relates to the claim of exemption under section 6 (20) (b) of the CST Act, 1956 or pass such further or other orders as may be deemed fit and proper in the circumstances of the case and render justice.

Prayer in WA(MD) No.697 of 2014:
to against the order and Judgment dated 25.04.2014 delivered by this court in W.P.(MD)No.13586 of 2013.

Prayer in WP(MD). 13586/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To be pleased to issue a Writ of Certiorarified Mandamus to call for the records on the file of the respondent herin in his CST NO.239383/2009-10 dated 12.7.2013 and 29.7.2013 and to quash the same with the direction to redo the assessment after providing an apportunity to the petitioner to rectify the defects int he C delcaration Forms relating to inter State sale falling under Section 8(1) of the CST Act, 1956 relating to the claim of exemption under section 6(2) (b) of the CST Act 1956.

Prayer in WA(MD) No.698 of 2014:
to against the order and Judgment dated 25.04.2014 delivered by this court in W.P.(MD)No.19876 of 2013.

Prayer in WP(MD). 19876/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this court to be pleased to issue a WRIT OF CERTIORARIFIED MANDAMUS or any other appropriate writ order or directing under Article 226 of the Constitution of India to call for the records in CST NO.239383/20010-11 dated 22.11.2013 and to quash the same with the direction to redo the assessment after providing an opportunity to the petitioners to rectify the defects in the C declaration forms relating to inter-state sales falling under Section 8(1) of the CST Act, 1956 and relating to the claim ofexemption under Section 6(2)(b) of the CST Act, 1956.

Prayer in WA(MD) No.699 of 2014:
to against the order and Judgment dated 25.04.2014 delivered by this court in W.P.(MD)No.3281 of 2014.

Prayer in WP(MD). 3281/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of CERTIORARIFIED Mandamus, to call for the records on the file of the respondent in CST.No.239383/2011-12 dated:7.2.2014 and quash the same and direct the respondent to re do the assessment after providing an opportunity to the petitioners to rectify the defects in the declaration forms relating to inter state sales falling under section 8(1) of the central sales tax, 1956 and under section 6(2) (b) of the CST Act, 1956 relating to the claim of exemption under section 6(2)(b) of the CST Act, 1956.

For Appellant : Mr.N.Inbarajan in all WAs

For Respondent : Mr.K.Chellapandian, AAG assisted by
Mr.M.Alagudevan, Spl.G.P. In all WAs

COMMON JUDGMENT

(Judgment of this Court was delivered by S.TAMILVANAN,J.)

All these Writ Appeals have been preferred challenging the common order dated 25.04.2014 made in W.P.(MD)Nos.2075, 8882, 10205, 13586, 19876 and 3291 of 2013 by the learned Single Judge in the writ petitions.

2.Heard the learned counsel appearing for the appellants as well as the learned Additional Advocate General appearing for the respondent.

3.Learned counsel appearing for the appellants submitted that the impugned orders were passed by the respondent / Assistant Commissioner (CT), Thiruverumbure, Trichy. According to him, no reason has been assigned in the impugned orders and therefore, straightaway the appellant filed the Writ petitions. However, the same was dismissed by the learned Single Judge without considering the merits of the Writ petitions.

4.Per contra, Mr.Chellapandian, learned Additional Advocate General drew the attention of this Court and submitted that even in the impugned order dated 17.12.2012 the respondent has specifically stated that an appeal against the order would lie with the Appellate Deputy Commissioner (CT), Thiruchirappalli, within 30 days from the date of receipt of this order. Learned Additional Advocate General drew the attention of this Court to the impugned order, wherein it has been answered for exemption claim under Section 6(2) and Section 8(A)(1)(b) of CST Act, 1956. It is averred by the respondent before the learned Single Judge that Field Audit was conducted by the Enforcement Wing (C.T.) officials at various spells and concluded on 18.12.2010 and their proposals were considerably analyzed by the assessing officers which is as follows:

> "1.The proof of "Transit Sales" viz. the declarations in Form E-1, Form-C and the Way Bills, which are the "Title to the goods" were not produced to the Audit. When they were required, it was stated that declarations in Form E-1 and Form C have been obtained only for a portion of the sales and they would be produced before the Assessing

Authority. Later, the dealers had submitted 436 nos.E-1 Form and 127 Nos.of C-Forms before the Assessing Officer on 04.05.2012. They were verified and found not in order.

2.The concern did not keep details such as Serial Number / Date of sale bills of the consignor, name and address of the consignor, CST Registration number of consignor, details of the name of the goods, value of purchase, way bill no. date, date of endorsement of the way bill, serial number of the declaration of Form E-1, serial number and date of invoice of the dealers, sale value of the goods, name and address of the ultimate buyer with their Tin No.and also serial number of declaration in Form C at the time of field audit. The details were provided to Assessing authority on 04.05.2012 with the link statement. On verification it had revealed various discrepancies such as some of the way bills were not submitted, even submitted way bills were not properly endorsed, the invoice dates specified were related to other financial years, E1 forms does not correlate the Form-c, some of the Forms were found damaged and their value could not be ascertained and wrong TIN no of BHEL, Trichy was found in some forms.

3.Details required in the Annexure II of returns of Form I under the CST Act, 1956 were not supplied even in the revised returns;

4)When enquired about the movement of goods, it was explained that BHEL would place orders for the supply of components of plant and machinery required for the ultimate buyers and the suppliers would dispatch the goods direct to the ultimate buyers and that the connected way bills would be endorsed later. The fact of dispatch of goods direct to the address of the ultimate buyers proves that there was no sale of goods effected during the transit of the goods, so as to attract Section 9(2)(B) of the CST Act, 1956 and that the way bills had been endorsed so as to claim exeption unduly; the endorsement in the way bills were not found to be in order.

5)The above proves that there occurred no Transfer of Title to the goods, that the movement of goods had been occasioned by the first seller only in pursuance of contract agreement entered into by the ultimate buyers made with this concern and that the second interstate sales effected by this concern had not been effected, while the goods were in Transit so as to claim exemption, as one falling under Section 3(b) of the CST Act, 1956. In view of this, these sales would fall under the purview of Section 3(a) of CST Act, 1956 and they were taxable as first inter state sale."

5.It was specifically stated in the impugned order that to attract Section 6(2) of the Act, it is essential that the concerned sale must be a subsequent interstate sale effected by transfer of document of title to the goods from one state to another and it must preceded by a prior interstate sale. Further, as per the finding, the appellant has not been provided with documentary evidences that the Title of Goods was transferred to the ultimate buyer, while the goods were in transit, it was not proved that the way bills which were in the name of BHEL as consignee, which were endorsed to the ultimate buyers while the goods were in Transit.

6.Learned counsel appearing for the appellant drew the attention of this Court by citing a decision rendered by the Hon'ble Supreme Court in **Assistant Commissioner Commercial Tax Department, Works Contract and Leasing, Kota Vs. Shukla and brothers reported in 2010 (30) VST 114 (SC)** wherein the Hon'ble Supreme Court has held that even if there is no alternative remedy available, Writ petition could be maintainable to meet ends of justice based on the facts and circumstances of each case. It has been categorically held by the Hon'ble Supreme Court that providing of reasons in orders is of the essence in judicial proceedings. Every litigant who approaches the court with a prayer is entitled to know the reasons for acceptance or rejection of such request. Absence of reasoning may ipso facto indicate whimsical exercise of judicial discretion. But the aforesaid facts and circumstances of the case is not applicable to the facts of the present case as contended by the learned Additional Advocate General.

7.The Learned Single Judge has passed a detailed order and discussed various aspects and held that the appellant / petitioner cannot file Writ petition without exhausting the appeal remedy, available under the Act.

8.In this regard, learned Additional Advocate General drew the attention of this Court to an unreported decision dated 18.06.2008 rendered by a Division Bench of this Court in W.A.(MD)Nos.423 and 424 of 2008 wherein it was held that the grievance ventilated by the appellant after the service of the assessment notice and getting clarification, before passing the order, challenge the same by way of writ petitions would not be legally sustainable. The Division Bench further held that it is a fit case to approach the appellate authority as the authority has not violated the principles laid down by the Hon'ble Apex Court in various decisions and the appellate authority was also directed to pass appropriate orders in accordance with law and accordingly, the Writ appeals therein were dismissed.

9.Learned Additional Advocate General drew the attention of this Court to the material papers and submitted that the tax amount due and payable by the appellant herein was more than 283 crores and out of which only 91 crores were paid and balance is 192 crores to be paid with interest.

10.It is further submitted by the learned Additional Advocate-General that the writ petitions and the appeals have been filed only for protracting the matter. Having gone through the material papers, impugned orders and considering the arguments of either side, we are of the view that there is no ground to entertain the writ appeals, as the orders passed by the learned single Judge would warrant no interference. It cannot be said that no reason has been assigned by the respondent in the orders impugned, before the learned single Judge, as argued on the side of the respondent.

11.In the light of various decisions of the Supreme Court and this Court, we are of the considered view that the writ appeals are not maintainable, since alternative efficacious remedy is available and the appellant was also informed by order, dated 17.12.2012 that appeal remedy would be available before the Deputy Commissioner, Commercial Tax, Trichy.

12.At least the appellant could have paid the amount due and payable under protest. However, without paying the amount, writ petitions were filed and subsequently, writ appeals were preferred, even without exhausting appeal remedy. On the said circumstances, we find it just and reasonable to dismiss the writ appeals with cost.

13.However, to meet ends of justice, considering the fact that the BHEL, a public undertaking, we permit the appellant herein to prefer appeal before the Deputy Commissioner, Commercial Tax, Trichy, within 15 days from the date of receipt of a copy of this order, as there would not be any other remedy available to the appellant.

With the above observations, these writ appeals are dismissed with costs of Rs.20,000/- (Rupees twenty thousand only). Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
The Assistant Registrar

/True copy/

Sub-Assistant Registrar

To

1 The Assistant Commissioner (CT),
Tiruverumbur Assessment Circle,
Trichy 620 020.

2 THE DEPUTY COMMISSIONER,
COMMERCIAL TAX, TIRUCHIRAPPALLI.

+6cc to Mr.N.Inbarajan, Advocate SR.No.13293 to 13298

+1cc to special Government Pleader SR.No.13880

nbj
sm:01.07.2015:6P/10C

W.A.(MD)Nos.694 to 699 of 2014
19.03.2015