BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 10.12.2015
CORAM :
THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Writ Appeal(MD) Nos.1302 and 1303 of 2015
and
M.P(MD)Nos.1 and 1 of 2015

Sree Ayyanar Spinning and Weaving Mills
represented by its Secretary,
N.Selvaraj,
Mill Premises,
Mallanginar 626 109,
Virudhunagar ... Appellant in both W.As.

Vs.

The Assistant Commissioner (CT) II,
Virudhunagar ...Respondents in both W.As.

Writ Appeals filed under Clause 15 of the Letters Patent against the order dated 06.11.2015 made in W.P.(MD)Nos.14287 and 14288 of 2015.

Prayer in WP(MD)Nos. 14287 & 14288 / 2015 :

Writ Petitions is filed under Article 226 of the Constitution of India, for the issue of a Writ of Certiorari to call for the records on the files of the respondent herein in TIN:33865740030/2009 -10 and 2012 - 2013 dated 29.06.2015 and quash the same.

For Appellant : Mr.N.Inbarajan

For Respondent (In both W.As) : Mr.Raja Karthikeyan, Additional Government Pleader.

JUDGMENT

(Judgment of the Court was delivered by **V.RAMASUBRAMANIAN,J**)

These appeals arise out of the dismissal of the writ petitions filed by the appellant/assessee on the ground that the appellant has a statutory alternative remedy of appeal, as against the orders of assessment impugned in the writ petitions.

2.Heard Mr.N.Inbarajan, learned counsel for the appellant. Mr.Raja Karthikeyan, learned Additional Government Pleader takes notice for the respondent.

3.In respect of the assessment years 2009-2010 and 2012-2013, the Assistant Commissioner, Commercial Taxes-II, Virudhunagar issued two pre-revision notices to the appellant on the ground that the sales turnover reflected in the returns was much lower than the turnover reflected in their annual report prepared under the Companies Act, 1956. The appellant gave their objections on 17.06.2015 to the pre-revision notices along with certain annexures.

4.However, the Assessing Officer passed assessment orders on 29.06.2015. The appellant thereafter, filed an application for rectification under Section 84 of the Tamil Nadu Value Added Tax Act, 2006. The applications for rectifications were not taken up for consideration.

5.In the meantime, when the respondent started attempts to recover the arrears, the appellant came up with two writ petitions in W.P (MD)Nos.14287 and 14288 of 2015 challenging the orders of assessment dated 29.06.2015. The learned Judge dismissed both the writ petitions on the ground of availability of alternative remedy. Therefore, the assessee has come up with the above appeals.

6.It is contended by Mr.N.Inbarajan, learned counsel appearing for the appellant/assessee that the orders of assessment were vitiated for want of jurisdiction. The pre revision notices dated 12.05.2015 were issued under TNVAT Act, 2006. But what the Assessing Officer sought to do was to include even the turnover under the Central Sales Tax Act, 1956 as part of the total turnover. Therefore, there was assumption of jurisdiction by the Assessing Officer, while exercising jurisdiction under the TNVAT Act, 2006 over the turnover that formed part of Central Sales Tax Act, 2006 turnover.

7.We do not think that the same constitute an error of jurisdiction. The Central Sales Tax Act, 1956 though a central enactment, is operated and administered only through the State authorities who administer the Tamil Nadu General Sales Tax regime or the Value Added Tax regime. In other words, the very same Officer of the State exercises jurisdiction in relation to both enactments.

8.In the case on hand, the Assessing Officer, did not seek to exercise any power under the Tamil Nadu General Sales Tax Act, 1959. All that he did was to take the total income as reported in the annual report of the company and found it to be in excess of the sales turnover reported under the TNVAT Act, 2006 by more than Rs.20 Crores. Therefore, he called upon the appellant to explain as to how this discrepancy has arisen. While explaining the discrepancy, it was the appellant who indicated that part of the same was due to consignment of sales, freight transfers, charity and other expenses. Merely because the difference in the turnover was accounted in a particular manner that included the turnover under the Central Sales Tax Act, 1956, it cannot be contended that the Assessing Officer while exercising jurisdiction under the TNVAT Act, 2006 has trenched upon the issues arising under the Central Sales Tax Act, 1956. Hence, we do not accept that the impugned orders suffers from the jurisdictional errors.

9.No objections with regard to the violation of the principles of natural justice can also be made, in the light of the fact that adequate opportunities have been given by the respondent before passing the impugned orders. Once it is found that there was no jurisdictional error and that there was no violation of principles of natural justice, the appellant/assessee cannot avoid the alternative remedy of appeal and come to this Court in exercise of writ jurisdiction.

10.A feeble attempt was made by the learned counsel for the appellant to pitch the claim of the appellant on the ground of gross injustice. Reliance was placed upon a decision of the Supreme Court in ***State of Tripura Vs. Manoranjan Chakraborty and others, 122 STC 594***. In the said case, the Supreme Court observed that when a citizen is faced with a high-handed or palpable illegal order, inflicting gross injustice upon him, he need not be thrown to the alternative remedy of appeal.

11.We have no quarrel with the above proposition. But the point here is as to whether such a gross injustice has been done to him or is manifest from the records. We do not think that any such thing is manifest. All other issues raised by the appellant are factual disputes which should be agitated only before the appellate authority.

12.Therefore, the writ appeals are devoid of merits. They are liable to be dismissed.

13.It appears that the learned Judge gave four weeks time to the appellant to file an appeal. The copy of the order of the learned Judge was received on 27.11.2015. The appellant has time upto 27.12.2015 to file appeals. Therefore, while dismissing the appeals, we make it clear that if the appellant files statutory appeals in a proper manner, as required by law on or before 27.12.2015, the respondent shall not take coercive action until any application for interim protection is taken up by him. Till 27.12.2015, no coercive steps shall be taken. Office is directed to return the original orders of assessment today itself to enable the appellant to file statutory appeals.

14.In the result, the writ appeals are dismissed. No costs. Consequently, M.P(MD)Nos.1 and 1 of 2015 are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar
Madurai Bench of Madras High Court,
Madurai.

To

The Assistant Commissioner (CT) II, Virudhunagar

+2cc to M/S.N.Inbarajan , Advocate in SR.No. 70763 & 70764

TS/10.12.2015/3P-4C/JGB-DP/SAR - II

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