IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 7.1.2016

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The Honourable Mr.Justice M.JAICHANDREN

and

The Honourable Mrs.Justice S.VIMALA

W.A.No.1794 of 2015

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Tvl. Sri Karthi Cement Agencies
represented by its Proprietor
Thiru C.Mariyappan
96-A, Nethaji Road
Thiruvarur ...Appellant/Petitioner

-vs-

The Commercial Tax Officer
II Floor, Taluk Office Building
Thanjavur Road
Thiruvarur ...Respondent/Respondent

Writ Appeal has been under Clause 15 of the Letters Patent, against the order passed in of the writ petition No.28203 of 2014 dated 29.10.2014.

WP.No.28203 of 2014:Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorified Mandamus to call for the records of the respondent pertaining to his orders in proceedings NO.TIN 33743920958/2009-10 dated 23.04.2012, quashing the same and directing the respondent to issue, if necessary, a fresh notice clearly stating his tax and penalty proposals and giving reasonable opportunity to the petitioner to submit his objections, if any, to those proposals, consider the same and pass appropriate orders thereon on merits and in accordance with law.

For appellant : Mr.Swarnam J. Rajagopalan

For respondent : Mr.Kanmani Annamalai

J U D G M E N T

(The Judgment of the Court was made by
M.JAICHANDREN,J.)

This writ appeal has been filed against the order passed by the learned single Judge of this Court, dated 29.10.2014, in W.P.No.28203 of 2014.

2. Paragraph 4 of the order passed by the learned single Judge of this Court, dated 29.10.2014, in W.P.No.28203 of 2014, reads as follows:

> "4. In the affidavit filed in support of the Writ Petition, there is no averment by the petitioner as to why the petitioner did not exhaust the statutory remedy available to him under the provisions of the Tamilnadu Value Added Tax Act 2006. Furthermore, the impugned order of assessment was passed in April 2012 and the contentions raised appear to be fully factual. Under these circumstances, the Writ Petition is meant to be not maintainable and accordingly, the same is dismissed. However, the dismissal of the writ petition will not stand in the way of the petitioner to work out his remedy under the provisions of the Act which shall be dealt with by the competent authority in accordance with law."

3. Pursuant to the said order, the appellant had preferred a statutory appeal before the Appellate Deputy Commissioner (CT), Thanjavur, under Section 51 of the Tamil Nadu Value Added Tax Act, 2006. However, the Appellate Deputy Commissioner (CT), Thanjavur, had dismissed the appeal filed by the appellant vide order, dated 12.1.2015, in M.P.No.48 of 2014, as time barred. Thereafter, the appellant has approached this Court, by way of the present writ appeal challenging the order of the learned single Judge of this Court, dated 29.10.2014, in W.P.No.28203 of 2014, stating that the learned single Judge ought not to have dismissed the writ petition on the ground of availability of an alternative remedy as per the ratio laid down by the Supreme Court in VENKATESWARAN Vs. WADHWANI (AIR 1961 SC 1506).

4. It has also been stated that when the fundamental rights of the writ petitioner or when principles of natural justice had been violated, the writ petition ought not to have been rejected on the ground of availability of an alternative remedy.

5. Per contra, the learned counsel appearing for the respondent had submitted that the appellant had preferred a statutory appeal before the Appellate Deputy Commissioner (CT),

Thanjavur, under Section 51 of the Tamil Nadu Vaue Added Tax Act, 2006, following the order passed by the learned single Judge of this Court, dated 29.10.2014, in W.P.No.28203 of 2014. Having accepted the order passed by the learned single Judge, dated 29.10.2014, made in W.P.No.28203 of 2014 and having availed the statutory remedy, by filing an appeal before the appellate authority concerned, it is not open to the appellant to challenge the earlier order passed by the learned single Judge of this Court, dated 29.10.2014, made in W.P.No.28203 of 2014. It would have been more appropriate for the appellant to challenge the order passed by the appellate authority, dated 12.1.2015, dismissing the statutory appeal preferred by the appellant. The appellant has filed the present writ appeal erroneously, without challenging the order of the appellate authority, dated 12.1.2015. Therefore, the present writ appeal, filed by the appellant, is liable to be dismissed, in limine.

6. In view of the submissions made by the learned counsels appearing for the parties concerned and on a perusal of the records available, we are of the considered view that the present writ appeal is not maintainable. If the appellant had been aggrieved by the order of the Appellate Deputy Commissioner (CT), Thanjavur, dismissing the statuory appeal filed by the appellant, the said order ought to have been challenged before the appropriate authority, in the manner known to law.

7. Having accepted the order passed by the learned single Judge of this Court, dated 29.10.2014, made in W.P.No.28203 of 2014, and having filed an appeal before the Appellate Deputy Commissioner (CT), Thanjavur, under Section 51 of the Tamil Nadu Value Added Tax Act, 2006, it would not be open to the appellant to file the present writ appeal before this Court. As the present writ appeal is devoid of merits, it is liable to be dismissed. Hence, the writ appeal stands dismissed. No costs.

-s/d-
Assistant Registrar(CSVII)

True Copy

Sub-Assistant Registrar

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To

The Commercial Tax Officer
II Floor, Taluk Office Building
Thanjavur Road
Thiruvarur

+1 cc to the Special Government Pleader(T) High Court
Madras-104 sr.1358

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