

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.724 and 725 of 2016  
and  
W.M.P.Nos.540 and 541 of 2016

Manoj Metals  
represented by its Proprietor  
Mr.Chandanmal. .. Petitioner in both WPs.  
Vs

The Assistant Commissioner(CT)  
Vallalar Nagar Assessment Circle  
No.116, Angappa Naicken Street  
Chennai-1. ... Respondent in both WPs.

Prayer:- This Writ Petition is filed under Article 226 of the  
Constitution of India, for the relief as stated therein.

For Petitioner : Mr.P. Rajkumar

For Respondents : Mr.S. Manoharan Sundaram  
Additional Govt. Pleader

\* \* \* \* \*

COMMON ORDER

These writ petitions have been filed to issue a Writ of  
Certiorarified Mandamus to call for the impugned proceedings of  
the respondent in TIN 33891161274/2012-2013 and TIN  
33891161274/2013-2014, dated 30.11.2015 and 15.12.2015  
respectively and quash the same and further direct the  
respondent to pass a fresh assessment order after providing  
the details and an opportunity sought for by the petitioner  
in its objections, dated 12.5.2015 and 22.6.2015 and written  
submissions, dated 14.9.2015.

2. The facts, which are necessary for the disposal of these  
writ petitions, are as follows:

2.1. The claim of the petitioner is that, they, being the registered dealers in SS Circles, SS Patti and SS Magnet Sheets, used to buy goods from local registered dealers on payment of Value Added Tax (in short 'VAT') and effect further sales inside the State and claimed Input Tax Credit (in short 'ITC') in its returns and adjusted the same while paying output tax.

2.2. While so, the place of business of the petitioner was inspected by the Enforcement Wing Officials of the Commercial Taxes Department on 04.06.2014 and the inspecting officials alleged that there would be reversal of ITC for the assessment years 2012-2013 and 2013-2014 for the reason that the sellers have not reported their sales to the petitioner and have also not produced the documents as per Section 19(13) of the TNVAT Act. Further, huge quantum of suppression of transactions were unearthed, claiming bill trading transactions.

2.3. The petitioner objected to the allegations of the inspecting officials and refused to sign in the statement, dated 25.8.2014 prepared by them and therefore, it was sent by post to the petitioner, who filed their objections.

2.4. However, according to the petitioner, without conducting an enquiry as contemplated under Section 27 of the TNVAT Act, the respondent had straight away issued notices, dated 20.02.2015 for the assessment years 2012-2013 and 2013-2014 to the petitioner based on the proposals received from the inspecting officials and thereby, proposed to reverse the ITC of Rs.74,14,788/- and Rs.32,84,468/- respectively.

2.5. In the objections, dated 12.05.2015, the petitioner requested the respondent to provide the details of the dealers whose Registration Certificates have been cancelled and also brought to the attention of the respondent that at the time of their purchases, the registration of earlier sellers were all active and merely because, the Registration Certificates of the earlier sellers were cancelled, it would not take away their right to claim ITC.

2.6. On receipt of the objections, dated 12.05.2015, the respondent issued notices, dated 15.05.2015 stating that the details requested by the petitioner have already been furnished in the notices, dated 20.02.2015 and if any details to be required by the petitioner, the same will be provided and requested the petitioner to appear for personal hearing on 10.06.2015.

2.7. On receipt of the notice, dated 15.05.2015, the petitioner through a letter, dated 09.06.2015 sought for an extension of time to appear for personal hearing. The petitioner thereafter send a written submission, dated 22.06.2015 through its Assistant Manager to the respondent, wherein the petitioner brought to the attention of the respondent that their request for details in respect of the disputes raised in the notices, dated 20.02.2015 and for an opportunity to cross examine the official, who made inspection in their business premises were not given and they have not been called upon to appear for personal hearing and in such circumstances, the personal hearing would not serve any purpose.

2.8. Thereafter, the respondent issued a notice, dated 01.09.2015 alleging that at the time of personal hearing, only the office boy of the petitioner appeared and submitted a cover containing the written arguments and no materials, such as purchase and sale bills, bank statement, stock register, balance sheet, trading, profit and loss account and other accounted records were filed and there was no denial of personal hearing and the documents requested by the dealers. Further, in the notice, dated 01.09.2015 the respondent requested the petitioner to appear for personal hearing on 14.09.2015 with the relevant records.

2.9. However, the petitioner filed objections, dated 14.09.2015 along with the books of accounts as required by the respondent in the notice, dated 01.09.2015.

2.10. Claiming that the respondent without providing the details sought for by the petitioner and without giving them any opportunity to prove their case, has passed the impugned orders, the petitioner has come forward with the above writ petitions.

3. Heard Mr.P.Rajkumar, learned Counsel appearing for the petitioner and Mr.S.Monaharan Sundaram, learned Additional Government Pleader appearing for the respondent.

4. The learned Counsel for the petitioner has contended that the respondent is wrong in passing the impugned orders without verifying the books of accounts of the petitioner and also without conducting an enquiry as contemplated under Section 27(2) of the TNVAT Act.

5. Further, he contended that without providing the details and documents requested by the petitioner in their objections, dated 12.05.2015 and 22.06.2015 and also in the written submissions, dated 14.09.2015, the respondent ought not to have passed the impugned orders.

6. He also submitted that without conducting an enquiry as contemplated under Section 81 of the TNVAT Act and without calling for the details from the selling dealers as per Section 85 of the TNVAT Act, the impugned orders came to be passed. Further, the respondent went wrong in passing the impugned orders reversing the ITC invoking Section 19(13) of the TNVAT Act, without providing the details of the enquiry, which revealed that the earlier sellers were only bill traders.

7. He, therefore, argued that the respondent erred in reversing the ITC for the alleged reason that the earlier sellers have not reported their transactions in their annexure II and accordingly, prayed for quashing the impugned orders.

8. In support of his contentions, he relied on the following decisions:

a. Althaf Shoes (P) Ltd. vs. Assistant Commissioner (CT) Valluvarkottam Assessment Circle, Chennai-8 reported in (2012) 50 VST 179 (Mad).

b. Jinsan Distributors vs. Commercial Tax Officer (CT), Chintadripet Assessment Circle, Chennai reported in (2013) 59 VST 256 (Mad).

c. Sri Vinayaga Agencies vs. Assistant Commissioner (CT) Vadapalani-I Assessment Circle, Chennai and another reported in (2013) 60 VST 283 (Mad).

9. On the other hand, the learned Additional Government Pleader appearing for the respondent has submitted that the respondent found various defects and that the objections filed by the petitioners were not acceptable and therefore, after affording an opportunity of being heard, the impugned orders were passed and as such, no interference by this Court is warranted.

10. Further, the learned Additional Government Pleader has argued that the petitioner has effected the purchase from R.C. cancelled dealers and there was mis-match and the fact reveals that all the purchases and sales made by the dealers from one and same dealers and the dealers have indulged in issuing bills among themselves without actual transaction of goods.

11. It is the contention of the learned Additional Government Pleader that the petitioners are in the habit of purchasing the bills from the bill traders/R.C. cancelled dealers with the intention to evade payment of tax on their actual local and inter-state sales by procuring the bills from the bill traders and therefore, the entire claim of ITC

is incorrect and ineligible and that it was reversed under Section 27(2) of the TNVAT Act, 2006.

12. Further, the learned Additional Govt. Pleader has contended that since the assessment orders have been passed in terms of the provisions of the TNVAT Act, 2006 and following the principles laid down by the Apex Court as well as this Court, the petitioner should have exhausted the appeal remedy without coming forward with this writ petition, which is not maintainable, as there is no question of law involved or principles of natural justice is violated.

13. I have carefully considered the afore said submissions made on either side and perused the impugned orders of the respondent.

14. Since the fate of these writ petition lies on the fate of the impugned orders, dated 30.11.2015 and 15.12.2015, it is imminent for this Court to decide the legality of the same.

15. A careful perusal of the impugned orders reveals the following defects:

- a. Invoice Mis-match
- b. Purchases effected from Registration Certificate cancelled Dealers
- c. Cross Verification revealed huge evasion of tax.
- d. Purchase Omission
- e. Bill trading, without payment of tax.

16. In respect of Defect No.1, the respondent has found that the dealers have effected purchases from the dealers who have not filed the returns or reflected the sales in their returns and therefore, the ITC availed by the dealers under Section 27(2) of the TNVAT Act 2006 was reversed and penalty was levied as per Section 27(4) of the TNVAT Act, 2006.

17. As far as Defect No.2 is concerned, the respondent has found that the purchase bills were not supported by the transport documents to prove the actual transaction of goods and also no expenditure was incurred towards loading and unloading of materials to substantiate the claim of ITC on purchases and therefore, reversed the ITC availed by the dealers under Section 19(15) of the TNVAT Act, 2006.

18. Regarding Defect No.3, the respondent has found that the burden of proving the genuineness of transaction lies on the dealers as per Section 17(2) of the TNVAT Act 2006. Since, the dealers have not produced proper documentary evidence in support of their transaction, the liability of tax was Rs.31,09,880/-. Therefore, the ITC availed by the dealers under Section 27(2) of the TNVAT Act, 2006 was reversed and penalty was levied as per Section 27(4) of the TNVAT Act, 2006.

19. Insofar as Defect No.4 is concerned, the respondent has found that there was Purchase Omission for the turnover of Rs.4,77,78,292/- and hence, equal time addition was made and levied tax at 14.5% of Rs.1,38,55,705/- along with levy of penalty as per the provisions of the TNVAT Act, 2006. An opportunity was given to the dealers to file their objections and after filing the objections by the petitioner, the respondent has considered the same and arrived at the above conclusions accordingly.

20. In regard to Defect No.1 is concerned, the respondent has concluded that the sellers are in the habit of issuing the invoices to the dealers/beneficiaries and there was no actual transaction of goods. Therefore, it is the duty of the dealer to prove the burden of proof under Section 17(2) of the TNVAT Act, 2006. Instead of proving their burden, they simply stated that they have purchased the goods and obtained the original invoice and therefore, they requested the assessing officer to obtain the details from the respective assessing officers of the vendors which is not correct and untenable. Further, if the selling dealers are genuine dealers, as and when their registration had been cancelled, they would have filed the Revision Petition against the proceedings of the retrospective cancellation of the registration, which they failed to do. But the registration cancelled dealers were not in existence and merely issued bills and invoices without any actual transaction of goods and issuing bills and invoices. Further, the respondent concluded that the contention of the dealers that they have furnished the original invoices as per Section 19(1) of the Act and eligible to avail the ITC as per Section 19(10)(a) and Rule 10(2) of the Act and Rules, is not acceptable and it is for the dealers to prove the burden of proof for the claim of ITC under Section 17(2) of the TNVAT Act, 2006. Further, the ITC availed by any registered dealer shall be only provisional and the assessing authority is empowered to revoke the same if it appears to be incorrect, incomplete or otherwise not in order, as per Section 19(16) of the Act. In these circumstances, the ITC availed by the dealers is reversed as per Section 27(2) of the Act.

21. Similarly, the respondent has dealt with Defect No.2 and come to the conclusion that the contentions of the dealers are not acceptable for the reason that the ITC availed by the dealer is only provisional and the assessing officer is empowered to revoke the same if it appears to the assessing authority to be incorrect, incomplete or otherwise not in order as per Section 19(16) of the Act. Further, as per Section 19(15), where, a registered dealer without entering into a transaction of sale, issues an invoice, bill or cash memorandum to another registered dealer with the intention to

defraud the Government revenue, the assessing authority, after giving reasonable opportunity of being heard, shall deny the benefit of ITC to such registered dealer who has claimed ITC based on such invoice, bill or cash memorandum from such date. In the case on hand, the respondent claimed that sufficient opportunities of personal hearing were given to the dealers and also dealer's representative one Mr.T.Vimalesh, Accountant and Authorised representative of the dealers, has appeared before the authority concerned on 14.9.2015 and filed a letter, but did not submit anything related to the issue. Therefore, it is the stand of the respondent that reasonable opportunities were given to the dealers to put forth their objections on the reversal of ITC.

22. Therefore, it can be well ascertained that the selling dealers' registration have been cancelled and also some of the dealers have stopped their business within the span of three months to within one year when the turnover crossed more than Rs.100 Crores. The Registration Certificate cancelled dealers have not contested against the cancellation proceedings before their respective Revisional Authorities to restore the registration if they were genuine dealers. The dealers have only issued the bills without any transaction of goods and closed their business or either cancelled by the respective registering authorities since they have issued only bills. The respondent specifically claimed that enquiries made by the registering authority of the respective Circles also revealed that the dealers were not indulged in the business of buying and selling the goods, but were solely issuing bills and invoices without any actual transaction of goods.

23. At this juncture, it is useful to refer to Section 4 of the Sale of Goods Act, 1930, which defines the Sale and Agreement to sale as hereunder:

"Sale and agreement to sell - (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to buyer for a price. There may be a contract of sale between one part owner and another."

24. Thus, the transfer of property in goods is essential and sine-qua-non for any contract of sale which is absent in this case. Further, it is stated that mere sale invoices alone are not enough to prove transaction of goods from the dealer to the customers, but other evidence for payment and transport documents are quite necessary that the dealer had really transacted the goods to his customer's place, with reference to which, he has to claim ITC by producing the purchase bills depicting sufferance of tax at earlier stage.

25. It is seen that the petitioner i.e., purchaser has failed to furnish the evidences of actual transaction of goods in respect of the transactions, they entered into. Accordingly, the provisions of Section 19(15) of the TNVAT Act have been invoked in reversing the illegal claim of ITC.

26. With regard to Defect No.3, the respondent arrived at the conclusion that the burden of proving the genuineness of transaction lies on the petitioner as per Section 17(2) of the TNVAT Act, 2006. Since, the petitioner's vendors have issued only bills and invoices and not really transacted the goods and also some of the dealers have not filed the returns and filed the returns incorrect/incomplete, there was difference in the claim of Input Tax Credit claimed by the dealers and the liability of tax is Rs.31,09,880/-. Further, the reasons for reversal of Input Tax Credit have already stated supra in the defects No.1 and 2. The dealers are one and same involved in the defect No.1 and 2 and therefore, the respondent concluded that the claim of ITC is liable to be reversed for wrong availment of Input of Tax Credit under Section 27(2) read with Section 19(1) of the TNVAT Act, 2006 and penalty also leviable under Section 27(4) of the Act.

27. According to the respondent, regarding the bill traders (S.Nos.1 to 29), their TIN No. was either cancelled by the respective registering authority or business was stopped by the dealers and actually, there was no transaction of goods and they issued only bills. The petitioner purchased the goods from the R.C. cancelled dealers for Rs.35.43 Crores out of Rs.116.39 Crores. Regarding S.No.30, the dealers' group concern viz., Monika Metal, Proprietor is Mrs. Lunidevi, w/o. Mr.Chandan Mal, have effected sales for Rs.2.86 Crores to Manoj Metals. Regarding active dealers in S.NO.31 to 35, the dealers have effected purchases from Tvl. Bhandari group of concerns (Tvl. Bhandari Foils and Tubes Ltd and Bhandari Steels Ltd) for 78.01 Crores. In all these cases, though the dealers claimed purchase of goods and claimed ITC, there was no proof for actual transaction of goods and payment details produced.

28. Moreover, the dealers have effected the purchases from the R.C. cancelled dealers and there was a mismatch and cross verification of other end dealers involving various provisions of Sections 19(13) and 19(15) and 27(2) of the TNVAT Act, 2006 and the said fact revealed that all the purchases and sales made by the dealers from one and the same dealers, i.e. from S.No.1 to 29, and the dealers have indulged in issuing bills among themselves without actual transaction of goods.

29. Further, the respondent claimed that the dealers are in the habit of purchasing the bills from the bill

traders/cancelled dealers not only in this assessment year but subsequent years also. It is the intention of the dealers is to evade the payment of tax on their actual local and inter-state sales by procuring the bills from the cancelled dealers/bill traders/stopped business dealers by claiming and adjusting the huge amount of ITC of Rs.5,90,74,095/- (Rupees Five Crores Ninety Lakhs Seventy Four Thousand and Ninety Five only). Therefore, according to the respondent, the entire claim of ITC is incorrect and ineligible and thus, to be reversed under Section 27(2) of the TNVAT Act, 2006.

30. Thus, it is very clear that the dealers have paid tax of Rs.55,402/- (Rupees Fifty Five thousand and four hundred and two only) for the entire sales turnover of Rs.109,24,15,035 (Rupees One Hundred Nine Crores, Twenty Four Lakhs Fifteen thousand and Thirty Five only) and adjusting ITC of Rs.5.91 Crores for the year 2012-13 and the dealers have evaded payment of output tax in this State by procuring local bills from Bill Traders/Cancelled Dealers/Stopped Business dealers and availed/adjusted the ITC against their local sales effected for Rs.109.24 Crores.

31. Therefore, the entire ITC of Rs.5,90,74,095/- (Rupees Five Crores Ninety Lakhs Seventy Four thousand and Ninety Five only) has been reversed under Section 27(2) of the TNVAT Act, 2006.

32. In respect of Defect No.4, the respondent has concluded that with regard to sales suppression of inter-state purchase of Rs.9,59,56,584 and proposing to higher rate of tax at 14.5% of Rs.1,38,55,705, the contentions of the dealers are that they have properly accounted for in their books of accounts regarding the purchases effected from inter-state of Rs.3,44,04,087/- and was also reflected in the Ledger account and also in the Profit and Loss Account for the year 2012-2013 and requested not to levy the tax and to drop the proposals. Even though, the dealers claimed that they had accounted for the entire inter-state purchases of Rs.3,44,04,087/-, they have evaded the payment of output tax in this State, by procuring local original bills from the cancelled dealers/bill traders/registered dealers and adjusted the ITC on the sale of inter-state purchased goods also. Therefore, the suppression of sales is found to be correct and proposals for levying tax on the turnover of Rs.9,55,56,584/- at 14.5% of Rs.1,38,55,705/- has been confirmed.

33. Hence, the respondent arrived at a conclusion that the reasons assigned by the dealers are not acceptable and overruling the objections, the entire ITC claimed/availed/adjusted for Rs.5,90,74,095/- for the year 2012-2013 against the local sales, inter-state sales and input

Tax Credit carry forwarded to the next year, are reversed under Section 27(2) of the TNVAT Act, 2006 read with Sections 19(1), 19(13), 19(15) and 19(16) of the TNVAT Act, 2006 and penalty also levied under Section 27(4)(ii) of the TNVAT Act, 2006.

34. In this regard, this Court finds it apposite to recall and recollect the following decisions:

(i) Tvl.Tamil Nadu Chlorates Limited v. The Registrar and another reported in CDJ 2003 MHC 223, wherein the Division Bench of this Court has held as follows:

"7. .... As ruled by the Judgment, in the present case, the Assessing Officer, the Joint Commissioner as well as the Special Tribunal recorded a very clear finding that the three selling dealers were non-existing and never carried on any business. The addresses, both business address and residential address given in the Registration Certificates are bogus. The summons sent to the addresses were returned with postal endorsement "No such addressee". On physical verification also, it was found that the three dealers never carried on any business. The cheques issued by the petitioner were realized by one Raja, who is nothing to do with the three dealers. By recording the above findings, the revenue established that the bills produced by the petitioner are bogus. The decision of this Court in the case of GOVINDAN & CO. VS. STATE OF TAMIL NADU (1975) 35 STC 50, which has been subsequently confirmed by the Supreme Court in STATE OF TAMIL NADU VS. RAMAN & CO. reported in (1994) 93 STC 1994 is also to the same effect. In the absence of any materials placed by the petitioner to prove the contrary either before the authorities or even before this Court, there is no scope for interference by this Court."

(ii) The State of Tamil Nadu rep. by The Deputy Commissioner (CT), Chennai (North) Division v. Tvl. Gupta Iron and Steel Company [Tax Case (Revision) Nos.1361 and 1362 of 2006, decided on 19.01.2012], wherein the Division Bench of this Court has held thus:

"6. ....The assessing authority also factually found that the registration certificates of the dealers in question were cancelled much prior to the purchases effected. Hence, the assessing authority re-determined the total and taxable turnover of the assessee on the ground that no material evidence was produced by the assessee to claim exemption as second sales. This being a factual finding, the first appellate authority has rightly appreciated the issue and also concurred with the finding of the assessing

authority in holding that the dealers in question did not have the valid registration on the date when the purchases were made by the assessee. ...

7. It is the contention of the learned counsel for the respondent-assessee that once the invoices were produced by the assessee to show that the purchases had been made, the burden of proof under Section 10 of the Tamil Nadu General Sales Tax Act lies only with the dealer and not on the assessee. Hence the returns should have been accepted and confirmed for exemption. In our opinion, the said contention cannot be accepted. Section 10 contemplates that for the purpose of assessment of tax under the Act, the burden of proof that any transaction or turnover of a dealer is not liable to tax shall lie on such dealer. This provision would apply only in case of an existing dealer. In the event the materials show that the dealers are non-existing and there were no registration on the date of sale, they will be only called as bill traders. In such circumstances, the question of placing reliance on Section 10 by the assessee does not arise. When the exemption of tax on second sales is sought to be claimed by the assessee, it is for the assessee to establish that the transactions were bona fide on two aspects, namely, (i) that the purchases were made by the assessee and the goods so purchased had suffered tax already and (ii) that such purchases were made from the dealers whose registration were in force on the date of purchases. This onus cannot be shifted from the assessee by placing reliance on Section 10 of the Act.

8. .... On the facts of the case, when once it is found that there were no materials to show that the purchases were made from the dealers with valid registration certificates, the only course open to the authorities is to deny the exemption as to the second sales."

35. Keeping in mind the dictum laid down in the aforesaid decisions, this Court is of the considered view on the basis of the detailed findings of the respondent that it is crystal clear that the petitioner with an intention to evade payment of tax produced the bogus bills obtained from the so-called dealers, who were not in existence and that their registrations have been cancelled and as there was no transaction of goods, the respondent has passed the impugned order in a detailed manner, after affording an opportunity of being heard to the petitioner.

36. In these circumstances, it is the duty of the petitioner to substantiate their claim by producing their books of accounts and to prove that the dealers from whom purchases were made were in existence and the goods were moved from the place of purchase to the place of the petitioner. Since the petitioner has miserably failed to prove the same, the respondent has passed the impugned order.

37. However, the learned Counsel for the petitioner has placed reliance upon the judgments of this Court, cited supra, to contend that the retrospective cancellation of the dealers would not affect the purchases made from such dealers by the petitioner and that the bills issued by them cannot be held to be bogus bills, however, in the considered opinion of this Court, those decisions would not lend any support to the case of the petitioner.

38. In this connection, it would be more relevant to reproduce the conclusion of the respondent in respect of the Defect No.1, which reads as under:

" From the above facts, it is well established that the above dealers are in the habit of issuing the invoices to the dealers/beneficiaries and there was no actual movement of goods. Further, some of the dealers have filed returns and some of the dealers have not filed the returns, but in all the cases, there is no proof for movement of goods. Therefore, it is the duty of the dealer to prove this burden of proof under Section 17(2) of the TNVAT Act, 2006. Instead of proving their burden, they simply stated that they have purchased the goods and obtain the original invoice, and therefore, requested the assessing officer to obtain the details from the respective assessing officers of the vendors is not correct and untenable. Further, if the above selling dealers are genuine dealers, as and when their registration had been cancelled, they would have filed the Revision Petition against the proceedings of the retrospective cancellation of the registration. But the registration cancelled dealers were not in existence and merely issued bills and invoices without any actual movement of goods and issuing bills and invoices. The dealers have cited some of the judgments pronounced by the Hon'ble High Court of Madras, which are not relevant to the present case."

39. Therefore, these disputed questions of facts cannot be gone into by this Court sitting in Writ Jurisdiction and that exercise can be done only by the appellate authority.

40. As rightly argued by the learned Additional Government Pleader, the petitioner without availing the statutory remedy of appeal, has filed this writ petition, which is not maintainable in the absence of any violation of principles of natural justice or where the order under challenge is wholly without jurisdiction or the vires of the statute, is under challenge.

41. The next question raised by the learned Counsel for the petitioner is that the respondent has passed the impugned order in violation of principles of natural justice by denying the opportunity of being heard to the petitioner.

42. At this juncture, it would be pertinent to refer to the averments made in the affidavit of the petitioner, which reads as under:

"After the receipt of the objections, dated 12.5.2015, the respondent issued notices, dated 15.5.2015, stating that the details requested by the petitioner have already been furnished in the notices, dated 20.2.2015 and if any details to be required by the petitioner, the same will be provided and requested the petitioner to appear for a personal hearing on 10.6.2015.

On receipt of the notice, dated 15.5.2015, the petitioner through a letter, dated 9.6.2015 sought for an extension of time to appear for personal hearing. The petitioner thereafter send a written submission, dated 22.6.2015 through its Assistant Manager to the respondent. Since the respondent had refused to receive the same, it was sent through the registered post on 23.6.2015 to the respondent."

43. Whereas the respondent, in the impugned order, has stated as under:

"The objections raised by the dealer in their letter, dated 12.5.2015 have been considered carefully with regard to the contentions raised in the notice, dated 20.2.2015. The dealers have requested for personal hearing in their objections dated 12.5.2015, hence, the dealers were requested to appear in person on 10.6.2015 at 11.30 a.m., along with books of accounts and other connected papers vide this office notice dated 15.5.2015 for check of accounts and also furnishing of the details as requested by them. The dealers did not turn up

for personal hearing. A second opportunity of personal hearing and production of all details such as books of accounts, Balance Sheet etc., was also given to the dealers vide this office notice dated 22.6.2015 with a request to appear in person on 2.7.2015 at 11.30 a.m. The notice was received by the dealers on 23.6.2015 and they did not turn up for personal hearing before the undersigned on 2.7.2015. Instead, the dealers have again, in their letter, dated 23.6.2015 stated that they have appeared for personal hearing on 22.6.2015 along with written argument whereas the assessing officer did not hear them. The assessing officer also refused to receive the letter containing the written argument and later it was sent through RPAD. The contention of the dealers is not acceptable. Neither the Proprietor nor the Authorised/Legal Representative of the concern, has appeared for hearing and submitted the books of accounts for check. However, in view of the contention of the dealer in their letter, dated 22.6.2015, again, a notice for personal hearing was given to the dealer vide this office notice, dated 1.9.2015 informing them that no authorised representative/Proprietor/legal representatives have appeared before the undersigned and only office boy submitted the written argument and no materials were produced for check of accounts. Therefore, requested to appear in person on 14.9.2015 at 11.30 a.m. with the connected records for check of accounts. To the notice issued on 1.9.2015 the dealers' representative Mr. T. Vimalash, Accountant, has appeared before the undersigned authority on 14.9.2015 for personal hearing and produced the Purchase Bills from April 12 to July 12 (4 months only) and Sales Bills from April 12 to July 12 (4 months only).

44. From the perusal of the above, the contention of the learned Counsel for the petitioner that no opportunity of personal hearing was given to the petitioner cannot be accepted and in the well-considered opinion of this Court that the impugned order was not passed in violation of principles of natural justice.

45. Further, when the alternative statutory remedy is available, the writ petition cannot be entertained, except for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order under challenge is wholly without jurisdiction or the vires of the statute is under challenge.

46. As already stated, in the case on hand, there is no violation of principles of natural justice. It is not the case of the petitioner that the order under challenge is wholly without jurisdiction or the vires of the statute, is under challenge and therefore, viewed from any angle, the present writ petitions cannot be maintained.

47. In this regard, it would be more pertinent to refer to the decisions of the apex Court to have clarity on the point that under what circumstances, a writ petition can be entertained, especially, when the alternative efficacious remedy is available.

48. In Union of India and others vs. Major General Shri Kant Sharma and another reported in (2015) 6 Supreme Court 773, while speaking on behalf of the Division Bench of the Apex Court, the Hon'ble Mr. Justice Sudhansu Jyoti Mukhopadhaya, after referring to the following decisions, has observed as under:

"28. In Kanaiyalal Lalchand and Sachdev and others vs. State of Maharashtra and others, (2011) 2 SCC 782, this Court considered the question of maintainability of the writ petition while an alternative remedy is available. This Court upheld the decision of the Bombay High Court dismissing the writ petition filed by the appellants therein on the ground of existence of an efficacious alternative remedy under Section 17 of SARFASI Act and held:

"23. In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See Sadhana Lodh v. National Insurance Co. Ltd., Surya Dev Rai v. Ram Chander Rai and SBI v. Allied Chemical Laboratories<sup>7</sup>.)

24. In City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla this Court had observed that: (SCC p. 175, para 30).

"30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of the writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) the person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors."

29. In *Nivedita Sharma vs. Cellular Operators Association of India and others*, (2011)14 SCC 337, this Court noticed that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. The Court further noticed the previous decisions of this Court wherein the Court adverted to the rule of self-restraint that writ petition will not be entertained if an effective remedy is available to the aggrieved person as follows:

13. In *Titaghur Paper Mills Co. Ltd. v. State of Orissa* this Court observed: (SCC pp. 440-41, para 11)

"11. ... It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of.

This rule was stated with great clarity by Willes, J. in *Wolverhampton New Waterworks Co. v. Hawkesford* in the following passage: (ER p. 495)

'... There are three classes of cases in which a liability may be established founded upon a statute. ... But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. ... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.'

The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspapers Ltd.* and has been reaffirmed by the Privy Council in *Attorney General of Trinidad and Tobago v. Gordon Grant and Co. Ltd.* and *Secy. Of State v. Mask and Co.* It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine."

14. In *Mafatlal Industries Ltd. v. Union of India* B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed: (SCC p. 607, para 77)

"77. ... So far as the jurisdiction of the High Court under Article 226—or for that matter, the jurisdiction of this Court under Article 32—is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and

would exercise their jurisdiction consistent with the provisions of the enactment."

15. In the judgments relied upon by Shri Vaidyanathan, which, by and large, reiterate the proposition laid down in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad, it has been held that an alternative remedy is not a bar to the entertaining of writ petition filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order under challenge is wholly without jurisdiction or the vires of the statute is under challenge.

16. It can, thus, be said that this Court has recognised some exceptions to the rule of alternative remedy. However, the proposition laid down in Thansingh Nathmal v. Supt. of Taxes and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field."

49. It is well settled that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. When appealable order is passed, particularly when the facts are in dispute, writ petition filed under Article 226 of the Constitution of India without availing the alternate remedy is not maintainable is the consistent view taken by the Supreme Court and by this Court.

50. In this connection, it is fruitful to refer to some of the decisions of the Honourable Supreme Court and this Court, as under: 50.1. In C.C.T.Orissa v. Indian Explosives Ltd. reported in 2008 AIR SCW 1815, the Honourable Supreme Court set aside the order passed in a tax matter and in paragraph 7 held thus:

"7. The High Court seems to have completely lost sight of the parameters highlighted by this Court in a large number of Cases relating to exhaustion of alternative remedy. Additionally the High Court did not even refer to the judgment of another Division Bench for the assessment years, 1997-98 and assessment years 1998-99 in respect of ICI India Ltd. In any event the High Court ought to have referred to the ratio of the decision in the said case. That judicial discipline has not been adhered to. Looked at from any angle, the High Court's judgment is indefensible and is set aside."

50.2. A Constitution Bench of the Supreme Court in *G.Veerappa Pillai v. Raman and Raman Ltd.*, reported in AIR 1952 SC 192 held that as the Motor Vehicles Act is a self contained code and itself provides for a forum for appeal/revision, the writ jurisdiction should not be invoked in matters relating to its provisions. A similar view was taken in , reported in 1985 (19) E.L.T. 22 (SC) = AIR 1985 SC 330.

50.3. In *Assistant Collector of Central Excise, Chandan Nagar v. Dunlop India Limited* reported in 1985 (19) E.L.T. 22 (SC) = AIR 1985 SC 330, the Honourable Supreme Court observed thus:

"Assistant Collector of Central Excise, Chandan Nagar v. Dunlop India Limited- AIR 1983 SC 603 A.P.Sen, E.S.Venkataramiah and R.B.Misra, JJ. held that where the statute itself provided the petitioners with an efficacious alternative remedy by way of an appeal to the Prescribed Authority, a second appeal to the Tribunal and thereafter to have the case stated to the High Court, it was not for the High Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution ignoring as it were, the complete statutory machinery. That it has become necessary, even now, for us to repeat this admonition is indeed a matter of tragic concern to us. Article 226 is not meant to short circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to [Art.226](#) of the Constitution. But, then the Court must have good and sufficient reason to by

pass the alternative remedy provided by statute. Surely, matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Art.226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

50.4. In C.A.Ibrahim v. ITO reported in AIR 1961 SC 609, H.B.Gandhi v. M/s.Gopinath & Sons reported in 1992 (Suppl) 2 SCC 312 and in Karnataka Chemical Industries v. Union of India reported in 1999, (113) E.L.T. 17 (SC) = 2000 (10) SCC 13, the Honourable Supreme Court held that where there is a hierarchy of appeals provided by the statute the party must exhaust the statutory remedies before resorting to writ jurisdiction. All these decisions are related to taxing statutes, and are hence apposite to the present context.

50.5. In Sheela Devi v. Jaspal Singh reported in AIR 1999 SC 2859 and Punjab National Bank v. D.C.Krishna reported in 2001 (6) SCC 569, the Honourable Supreme Court held that if the statute provides for remedy of revision or appeal, writ jurisdiction should not be invoked.

50.6. In Union of India v. T.R. Verma reported in AIR 1957 SC 882 the Honourable Supreme Court held that it is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It will be a sound exercise of discretion to refuse to interfere in a petition under Article 226 of the Constitution unless there are good grounds to do otherwise.

50.7. In A. Venkatasubbiah Naidu v. S.Chellappan reported in (2000) 7 SCC 695 (vide para 22), the Honourable Supreme Court deprecated the practice of exercising the writ jurisdiction when an efficacious alternative remedy is available.

50.8. In W.P.No.981 of 2003 (Tax) (M/s.Khandelwal Soya Industries Ltd. v. State of U.P. and others) decided on 27.8.2003 a Division Bench of the Allahabad High Court dismissed a writ petition challenging the provisional assessment orders under the U.P.Trade Tax Act on the ground of alternative remedy under Section 9 of that Act. Against the aforesaid judgment, Special Leave Petition was filed before the Supreme Court which has been dismissed.

50.9. Same is the view taken by different Division Benches of this Court in W.A.No.1555 to 1557 of 2007 dated 10.12.2007; W.A.Nos.749 & 750 of 2006 dated 22.6.2006 and W.A.Nos.590 & 591 of 2008 dated 11.6.2008. In W.A.No.590 & 591 of 2008 the First Bench of this Court by order dated 11.6.2008 held as follows:

"2. These writ appeals have been filed challenging an order passed by the learned single Judge, dated 17.9.2007. Subject matter of the challenge was an order passed by the Assessing Authority under the Tamil Nadu General Sales Tax Act. We need to consider the merits of the case, as in view of the admitted position against the order of the Assessment Officer, statutory appeal is provided. We just remind ourselves of the repeated directions given by the Apex Court that in the Revenue matters, the Taxing Statute itself is a complete Code and the writ court should not ordinarily interfere unless the assessee had exhausted all his statutory remedies.

3. In view of this well settled principle, we direct the appellant to file an appeal within a period of three weeks from today before the Appellate Authority. ...."

50.10. A Division Bench of this Court in Nivaram Pharma Pvt. Ltd. v. CEGAT, Madras reported in 2006 (205) ELT 9 (Mad) considered similar issue of by-passing alternate remedy in tax matters. In paragraphs 5 to 14 the Division Bench held as follows:

"5. It is well settled by a series of decisions of the Supreme Court that particularly in tax matters there should be no short circuiting of the statutory remedies, vide Titaghur Paper Mills Co. Ltd. v. State of Orissa - AIR 1983 SC 603, Assistant Collector of Central Excise, Chandan Nagar v. Dunlop India Limited, 1985 (19) E.L.T. 22 (SC) = AIR 1985 SC 330, etc.

6. It is well settled that when there is an alternative remedy ordinarily writ jurisdiction of this Court under Article 226 of the Constitution should not be invoked. This principle applies with greater force regarding tax proceedings. As observed by the Supreme Court in Titaghur Paper Mills Co. Ltd. v. State of Orissa - AIR 1983 SC 603:

"Where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of."

50.11. In *Sharda Industries v. Commercial Tax Officer* reported in 2008 (14) VST 276 (Mad), similar view was taken by a learned single Judge (M.Jaichandren, J.) and the said view of the learned single Judge was confirmed by a Division Bench.

51. When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. This Court further noticed the previous decisions of the Apex Court and this Court wherein the Court adverted to the rule of self-restraint that writ petition will not be entertained if an effective remedy is available to the aggrieved person.

52. Further, if effective and adequate opportunity was given to the dealers before passing the final assessment orders and principles of natural justice are not violated, the dealers can very well put to challenge the assessment orders of the authority concerned only before the appellate authority.

53. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of.

54. It is also settled law that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field.

55. Further, in this case, the respondent claimed that there is a huge evasion of tax to the tune of several Crores of Rupees. For the transaction of Rs.109 Crores, the petitioner paid the tax of Rs.55,402/- (Rupees Fifty Five Thousand Four Hundred and Two only) only. All these facts are to be decided only by the appellate authority in the manner known to law.

56. In view of the above, this Court is of considered view that since the petitioner has approached this Court by way of this writ petition without exhausting the alternative statutory remedy of appeal, while dismissing the writ petitions, liberty is granted to the petitioner to approach the appellate authority, if they desire so, within 30 days from the date of receipt of a copy of this order.

57. With the above directions, both the writ petitions are dismissed. However, there will be no order as to costs. Connected M.Ps are also dismissed.

-s/d-  
Assistant Registrar

True Copy

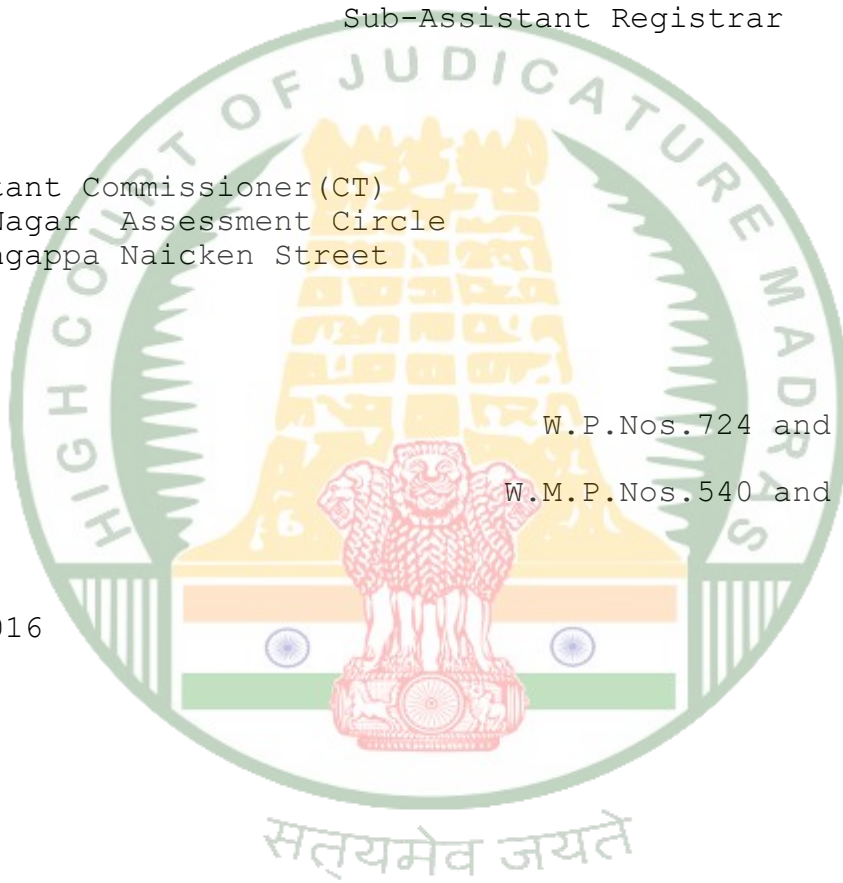
Sub-Assistant Registrar

srcm/rsb

To  
The Assistant Commissioner (CT)  
Vallalar Nagar Assessment Circle  
No.116, Angappa Naicken Street  
Chennai-1.

W.P.Nos.724 and 725 of 2016  
and  
W.M.P.Nos.540 and 541 of 2016

ak(co)  
aa10/05/2016



WEB COPY