IN THE HIGH COURT OF JUDICATURE AT MADRAS

17.11.2016

CORAM:

THE HON'BLE MR.JUSTICE NOOTY RAMAMOHANA RAO
&
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.A.Nos.1480 and 1481 Of 2016
&
C.M.P.Nos.18381 to 18383 of 2016

M/s.Manoj Metals,
represneted by its Proprietor
Mr.Chandanmal,
No.26/12, Kannaiah Street,
Chennai 600 079.

... Appellant in both appeals

Versus

The Assistant Commissioner (CT)
Vallalar Nagar Assessment Circle,
No.116, Angappa Naicken Street,
Chennai 600 001.

... Respondent in both appeals

Prayer: Writ Appeals filed under Clause 15 of the Letters Patent Act against the orders dated 2.3.2016 passed by the learned Single Judge in W.P.Nos.724 and 725 of 2016 respectively.

Prayer in Writ Petition Nos. 724 and 725/2016: These Writ petition have been filed to issue of Writ of Certiorarified mandamus to call for the impugned proceedings of the impounent in TN 33891161274/2012-2013 abd TN 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 assesment elder after providing the details and as oppertinity sought for by the petitioner in the objecting dated 12/05/2015 and 22/06/2015 and writter submissions dated 14/09/2015

For Appellant : Mr.P. Rajkumar
For Respondent : Mr.S.Kanmani Annamalai
Addl. Govt. Pleader

COMMON JUDGMENT

These Writ Appeals are directed against the order rejecting the Writ Petitions instituted by the appellant. While doing so, the learned Single Judge has granted 30 days time from the date of receipt of the copy of the order for the Writ Petitioner to prefer an appeal to the Appellate Authority. Though the order is passed on 2nd of March 2016, it is averred that the certified copy of this judgment has not been made available by the Registry till 2nd of June 2016.

2. It will be relevant, at the very outset, to note that the Writ Petitions are instituted challenging the orders of assessment passed on 30.11.2015 and 15.12.2015. It is not in dispute that under Section 51 of Tamilnadu Value Added Tax Act 2006, any person objecting to an order passed by the appropriate authority under sections 22, 24, 26, 27, 28, 29, 34 and 40 other than an order passed by a Deputy Commissioner (assessment) may, within a period of 30 days from the date on which the order was served on him, may appeal to the jurisdictional Appellate Deputy Commissioner and in pursuance thereto, power is vested in the Appellate Deputy Commissioner to confirm, reduce, enhance or annul the assessment or the penalty imposed or both. Power was also conferred to set aside the assessment order and direct the assessment authority to make a fresh assessment after such further enquiry as he may direct to conduct. Thus Appellate Authority has been conferred with the power to examine every ground urged in the appeal preferred to him not only with regard to the question of fact, but also with regard to the questions of law.

3. The Writ Petitioner contended that the show cause notice dated 20.2.2015 has proceeded upon misconception of fact and law and inspite of bringing it to the notice of the assessing officer that it is neither fair, nor proper for him to proceed any further without first of all furnishing the necessary details sought for by the assessee, to enable him to furnish effective reply, but instead, he has proceeded further and then passed impugned orders of assessment on 30.11.2015 and 15.12.2015.

4. When once a show cause notice has indicated broadly, the area of scrutiny sought to be undertaken by the assessing officer and when once the assessee gives a detailed representation as exhaustively as is possible on the subject, we fail to understand as to how any prejudice is either visited or caused to an assessee in putting forth his case effectively and canvassing his view point on the proposed grounds of the assessment. The principles of natural justice are intended essentially to prevent miscarriage of justice. They are intended to ensure that the person against whom action is proposed is not condemned unheard and hence is provided with a fair and reasonable opportunity.

5. In the instant case, we find that the show cause notice has clearly indicated that a fresh look is sought to be given based on the grounds which are brought out as under:

1. Invoice Mis-match;
2. purchases effected from the registration cancelled dealers;
3. facts emerging from the cross verification of the particulars furnished by the other dealers with whom the assessee in question carried on business;
4. purchase ommission for the assessment year concerned and
5. non filing of 'C' forms etc.

6. In general terms, the show cause notice has clearly indicated the areas of scrutiny intended to be undertaken by the assessing officer. In that process, if there is any further material, that is required to be gathered by the assessee in support of his plea, he has to necessarily participate in the enquiry before the assessing officer and specifically take measures for securing the copies of the material which is otherwise in the custody of the department to be brought over for scrutiny of the assessing officer. In spite of any such request made, the assessing officer proceeds further in the matter without conceding to the request of the assessee, the effect of any such failure and it's ultimate effect on the order of assessment is liable to be examined by the Appellate Authority. For instance, if the assessee is seeking to require material to be furnished as to whether the cancellation of the registration of any particular dealer has been carried out strictly in accordance with law or not, perhaps the assessing officer

may not be required to furnish all that material, the reason being invalid cancellation of registration of some other dealer is not a strict concern of the assessee concerned. In contrast to knowing the actual date of cancellation of the registration of the dealer concerned from whom the assessee is alleged to have made purchases subsequent to such cancellation.

7. In the instant case, so far as the assessee is concerned he is only required to address the question as to whether the purchases have been made by him any time prior to the date of cancellation of the registration certificate of the dealer concerned or not. As on the date of his purchases, if the registration certificate is subsisting, law is very clear in setting forth the principle that the purchaser cannot be faulted for having made purchases from a dealer whose registration certificate was cancelled subsequently, with effect from an anterior date. Therefore, the dealer in the instant case is not required to be made available either the material which lead to the cancellation of the registration of some other dealer , nor can he be permitted to debate about the validity and sustainability of such an order of cancellation. It is none of his concern. Therefore, we are convinced that the questions such as illegality, perversity of findings of fact contained in the order of assessment are questions which can be raised only before the Appellate Authority, but not before the court exercising the jurisdiction under Article 226 of the Constitution.

8. We are in broad agreement with the conclusion drawn by the learned Single Judge. The questions which the assessee, in our opinion, is urging against the order of Assessment are questions on merits. It is for the Appellate Authority to examine such contentions canvassed by the assessee and then make a careful assessment as to its impact on merits of the matter and then arrive at a conclusion. Such an exercise, cannot be carried out by the High Court in exercise of jurisdiction under Article 226, particularly in the absence of challenge to the competence of the officer who has undertaken the assessment exercises. In this view of the matter, we find no warrant to interfere with the exercises of discretion carried out by the learned Single Judge in relegating the writ petitioner/the assessee for availing effective alternative remedy under section 51 of the Act available to him.

9. No doubt, we are conscious that availability of an alternative remedy is never treated or considered as a bar for exercise of Article 226 of Constitution. But this is a self imposed restriction to ensure that all findings of fact are first arrived at by the authorities prescribed under the statute, so that the judicial review exercise under Article 226 of the Constitution would become far more effective and easy. Once all findings of fact have been properly and correctly worked out, it becomes easy for the High Court to examine the sustainability of the order from the limited grounds available for the rejudicial review exercise thereof. Therefore, we are of the opinion that there is no merit in the Writ Appeal.

10. These Writ Appeals also have been preferred with a delay of 15 days. Though the case has left an uneasy feeling in our mind that the assessee has been unjustly bargaining for additional time than what has been provided by the statute, nonetheless, we consider that the ends of justice would be served better by granting him time to avail the Appellate remedy. Therefore we grant time to the Writ Petitioner to avail the Appellate remedy on or before 2nd of December 2016. If any such appeal is preferred on or before 2nd of December 2016 by the assessee, the Appellate Authority may entertain the same and deal with it on merits instead of rejecting it only on the ground that it has been so preferred beyond the time limit prescribed in the statute. The Writ Petitions accordingly stand disposed of at the admission stage after hearing Sri.S.Kanmani Annamalai, learned Addl. Government Pleader, Sales Tax Department.

11. The Registry may return the original assessment order, if applied for immediately.

12. It is needless for us to observe that the Appellate Authority while dealing with the appeal will get guided completely by the merit or lack of it and in no manner it will get influenced by the observations made by this Court either while dealing with the writ petition or these writ appeals, in as much as all such observations are intended only for the purpose of the disposal of the case concerned, but not any reflection upon the merits of the sustainability of the order of assessment.

13. Consequently, the condonation of delay applications are allowed. Writ Appeals stand disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

msr
To,
1. The Assistant Commissioner (CT)
   Vallalar Nagar Assessment Circle,
   No.116, Angappa Naicken Street,
   Chennai 600 001.

2. The section office (ER Section)
   High court Madras.

W.A.Nos.1480 and 1481 Of 2016 &
C.M.P.Nos.18381 to 18383 of 2016

gm(CO)
rs(05/01/2017)