IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 7/6/2016

C O R A M

The Honourable Mr.Justice S.Manikumar
and
The Honourable Mr.Justice D.Krishnakumar

Writ Appeal No.530 of 2016
a n d
C.M.P.No.7192 of 2016

MCC Digital Innovations Private Ltd
rep. By its Authorised Signatory
R.K.Sharma
B-2/73 C, Safdarjung Enclave
New Delhi 110 029. ... Appellant /Petitioner

Vs

The Assistant Commissioner (CT)
Ayanavaram Assessment Circle
7th Floor Dowlath Towers
Taylors Road
Kilpauk
Chennai 600 010. ... Respondent /Respondent

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order passed in W.P.No.18147 of 2015 dated 24/6/2015.

Prayer in Writ Petitioner: Writ Petition is filed under Article 226 of the constitution of India, praying to issue a Writ of Certiorarified mandamus calling for the records of the Respondent in his proceedings in TIN 33831003100/2010-2011 dated 13.03.2015 and quash the same and forbear the respondent from taking any corecive action to recover the sum of Rs.27,91,302/- in pursuance of the above order.

For appellant : Mr.M.Kamalanathan

J U D G M E N T

(Judgment of the Court was made by S.Manikumar,J)

This writ appeal has been filed against the order dated 24/6/2015 passed in W.P.No.18147 of 2015.

2. Material on record discloses that the appellant has sought for a writ of certiorarified mandamus, to quash the Assessment order, dated 13/3/2015 for the year 2010 - 2011 and consequently, a direction to the Assistant Commissioner (CT), Ayanavaram Assessment Circle, Chennai/respondent herein, from taking any coercive action, to recover a sum of Rs.27,91,302/-.

3. The main contentions before the writ Court were that notice sent to the registered place of business viz., No.B.23/24 City Centre, No.232, Purasawakkam High Road, Chennai 10 had been returned with the postal acknowledgement 'Left', for the reason that the appellant/assessee had closed down the business in the year 2011, but the notice was served on the residential address of the Director of the Assessee Company. In as much as the business was closed in the year 2011, there was no trading activity and that the very assessment itself is erroneous.

4. Going through the material on record, the writ Court found that the Director of the petitioner Company had received the notice. Therefore, the Court observed that it is the duty of the assessee to respond to the show cause notice by filing a detailed reply, which the assessee failed. Accordingly, an order of assessment dated 13/3/2015 came to be passed.

5. Holding that the Tamil Nadu Value Added Tax Act, 2006 provides for an alternate remedy for filing an appeal before the Appellate Deputy Commissioner (CT), Chennai Central, Chennai, within a period of thirty days, from the date of receipt of a copy of the order and it is for the appellant to move the Appellate Authority, writ petition has been dismissed.

6. Though Mr.M.Kamalanathan, learned counsel for the appellant reiterated the above said submissions, we are not inclined to interfere with the order impugned. As rightly observed, statute provides for an efficacious and alternative appellate remedy. Added further, it is the consistent view that when an alternative remedy is available, Courts would not ordinarily entertain writ petitions.

7. Added further, in Union of India v. T.R.Verma, AIR 1957 SC 882, the Hon'ble 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 to 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.

8. In C.A.Ibrahim v. ITO, AIR 1961 SC 609, H.B.Gandhi v. M/s. Gopinath & sons, 1992 (Suppl) 2 SCC 312 and in Karnataka Chemical Industries v. Union of India, 1999 (113) E.L.T. 17(SC) = 2000 (10) SCC 13, the Hon'ble 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.

9. The general principles of law to be followed while entertaining a writ petition, when an alternative remedy is available, as per the decision of the Hon'ble Apex Court in U.P.State Spinning Co. Ltd. Vs. R.S.Pandey and Another (2005) 8 SCC 264, at para No.11 are as follows:

> "Except for a period when Article 226 was amended by the Constitution (Forty-Second Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction or discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided, the high Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction."

10. In United Bank of India Vs. Satyawati Tondon and

Others {(2010) 8 SCC 110}, the Hon'ble Apex Court, at paragraph Nos.43 to 45, held as follows:-

> "43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they do not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the high Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.
>
> 44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court,

which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision etc., and the particular legislation contains a detailed mechanism for redressal of his grievance."

11. In Nivedita Sharma Vs. Cellular Operators Association of India and Others {(2011) 14 Supreme Court Cases 337}, the Honourable Apex Court 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 are under challenge. The Court has recognised some exceptions to the rule of alternative remedy. However, 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 or grievance still holds the field."

12. The Hon'ble Apex Court, after considering a catena of cases, in Shauntlabai Derkar and Another Vs. Maroti Dewaji Wadaskar {(2014) 1 Supreme Court Cases 602}, at para Nos.15 to 18, held as follows:-

"15. Thus, while it can be said that

this Court has recognised some exceptions to the rule of alternative remedy i.e, where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal Case {Thansigh Nathmal Vs. Supt. of Taxes, AIR 1964 SC 1419}, Titaghur Paper Mills Case {Titaghur Paper Mills Co. Ltd Vs. State of Orissa (1983) 2 SCC 433} 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. Therefore, when a statutory forum is crated by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

16. In the instant case, the Act provides complete machinery for the assessment/reassessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In Ram and Shyam Co. Vs. State of Haryana (1985) 3 SCC 267, this Court has noticed that if an appeal is from "Caesar to Caesar's wife", the existence of alternative remedy would be a mirage and an exercise in futility.

17. In the instant case, neither has the writ petitioner assessee described the

available alternate remedy under the Act, as ineffectual and non-efficacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of the instant case. In light of the same, we are of the considered opinion that the writ Court ought not to have entertained the writ petition filed by the assessee, wherein he has only questioned the correctness or otherwise of the notices issued under Section 148 of the Act, the reassessment orders passed and the consequential demand notices issued thereon.

18. In view of the above, we allow this appeal and set aside the judgment and order passed by the High Court in Chhabil Dass Agarwal Vs. Union of India {W.P.(c) No.44 of 2009, decided on 5/10/2010}. We grant liberty to the respondent, if he so desires, to file an appropriate petition/appeal against the orders of reassessment passed under Section 148 of the Act within four weeks' time from today. If the petition is filed before the appellate authority within the time granted by this Court, the appellate authority within the time granted by this Court, the appellate authority shall consider the petition only on merits without any reference to the period of limitation. However, it is clarified that the appellate authority shall not be influenced by any observation made by the High Court while disposing of Writ Petition (Civil) No.44 of 2009, in its judgment and order dated 5/10/2010."

13. After considering a plethora of judgments, in Union of India and Others Vs.Major General Shri Kant Sharma and Another {(2015) 6 SCC 773}, at para36, the Apex Court held as follows:-

"The aforesaid decisions rendered by this Court can be summarised as follows:-

(i). The power of judicial review vested in the High Court under Article 226 is one of the basic essential features of the Constitution and any legislation including the Armed Forces Tribunal Act, 2007 cannot override or curtail jurisdiction of the High Court under Article 226 of the Constitution of India (Refer: L.Chandrakumar Vs. Union of India (1997) 3 SCC 261 and S.N.Mukherjee Vs. Union of India (1990) 4 SCC 594.

(ii). The jurisdiction of the High Court under Article 226 and this Court under Article 32 though cannot be circumscribed by the provisions of any enactment, they will certainly have due regard to the legislative intent evidenced by the provisions of the Acts and would exercise their jurisdiction consistent with the provisions of the Act (Refer: Mafatlal Industries Ltd., Vs. Union of India (1997) 5 SC 536.

(iii). When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. (Refer: Nivedita Sharma Vs. Cellular Operators Assn. of India (2011) 14 SCC 337.

(iv). 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. (Refer: Nivedita Sharma Vs. Cellular Operators Assn. of India (2011) 14 SCC 337.)"

14. In Veerappa Pillai Vs. Raman & Raman Ltd {1952 SCR 583}, CCE Vs. Dunlop India Ltd {(1985) 1 SCC 260}, Ramendra Kishore Biswas Vs. State of Tripura {(1999) 1 SCC 472, Shivgonda Anna Patil Vs. State of Maharashtra {(1999) 3 SCC 5}, C.A.Abraham Vs. ITO {(1961) 2 SCR 765}, Titaghur Paper Mills Co Ltd., Vs. State of Orissa {(1983) 2 SCC 433}, H.B.Gandhi Vs. Gopi Nath & Sons {1992 Supp (2) SCC 312}, Whirlpool Corpn Vs. Registrar of Trade Marks {(1998) 8 SCC 1}, Tin Plate Co. of India Ltd., Vs. State of Bihar {(1998) 8 SCC 272}, Sheela Devi Vs. Jaspal Singh {(1999) 1 SCC 209} and Punjab National Bank Vs. O.C.Krishnan {(2001) 6 SCC 569}, this Court held that where hierarchy of appeals is provided by the statute, the party must

exhaust the statutory remedies before resorting to writ jurisdiction.

15. In the light of the above discussions and decisions, we are of the view that the learned Judge has rightly dismissed the Writ Petition, as not maintainable. We find no infirmity in the order of the learned single Judge dated 24/6/2015 passed in W.P.No.18147 of 2015.

16. The Writ Appeal is dismissed. Liberty is granted to the appellant to file an appeal, if so advised. No costs. Consequently, the connected Miscellaneous Petition is closed.

17. Mr.M.Kamalanathan, learned counsel for the appellant submitted that sufficient time may be given for filing an appeal, as the appellant is the resident of New Delhi, he prayed for four weeks time. Considering the request, we are inclined to grant time.

18. Accordingly, four weeks time is granted to file an appeal. Registry is directed to return the original order of assessment, dated 13/3/2015, to the learned counsel for the appellant, after getting the attested copy.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mvs.

To

The Assistant Commissioner (CT)
Ayanavaram Assessment Circle
7th Floor Dowlath Towers
Taylors Road
Kilpauk
Chennai 600 010.

2 ccs to Mr.M.Kamalanathan, Advocate, sr.30282

W.A.No.530 of 2016

nrjk co
kra 10.06.2016