IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.28955 and 28956 of 2016 and

WMP Nos.25027 to 25028 of 2016

M/s OPG Metals Private Limited
Rep. By its Director - A.Krishnan,
Maruthur Village,
Therizhandur - 609 808,
Kuttalam Taluk,
Nagapattinam District ... Petitioner in both the petitions

-vs-

The Commercial Tax Officer - II,
Mayiladuthurai II,
Mayiladuthurai,
Nagapattinam District ... Respondent in both the petitions

Prayer in both the petitions: Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records on the file of the respondent in its impugned proceedings made in TIN 33094061432/2008-2009 and 2011 - 2012 respectively dated 04.07.2016 and quash the same as illegal and arbitrary.

For Petitioner : Mr.S.Rajasekar
For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader

C O M M O N O R D E R

Heard Mr.S.Rajasekar, learned counsel appearing for the petitioner.

2. These Writ Petitions have been filed challenging the orders of assessment passed by the respondent under the provisions of the Tamilnadu Value Added Tax Act, 2006 for the assessment years 2008-2009 and 2011-2012.

3. This is the second time the petitioner is before this Court pertaining to the very same assessment years. Earlier,

the petitioner filed W.P.Nos.1098 to 1104 of 2016 challenging the assessment orders. The said Writ Petitions were disposed of by an order dated 05.02.2016 with a direction to the petitioner to submit all documents before the respondent and the respondent was directed to consider the documents. The petitioner complied with the direction and has produced certain documents.

4. The respondent has rendered a factual finding in effect of those documents. Obviously, these issues are all disputed questions of fact, which cannot be adjudicated in these Writ Petitions. The petitioner has been provided reasonable opportunity to place material before the authority. If the petitioner/Company is aggrieved by the factual reasons given by the authority, they should prefer an appeal, as against the impugned order and there is no justification for the petitioner to bypass the appeal remedy, which is not only effective but efficacious remedy. Merely because pre-deposit is mandatory for filing an appeal, the same cannot be a ground to bypass the appellate remedy.

5. Accordingly, these Writ Petitions are held to be not maintainable and accordingly, the same stands dismissed. However, the petitioner is at liberty to file an appeal before the appellate authority and if such an appeal is filed within 30 days from the date of a receipt of copy of this order, the Appellate authority shall entertain the appeal without reference to limitation. Consequently, connected miscellaneous petitions are closed. No costs.

s/d-
Assistant Registrar(CS-VI)

True Copy

Sub-Assistant Registrar

ssd

To
The Commercial Tax Officer - II,
Mayiladuthurai II,
Mayiladuthurai, Nagapattinam District

+2 CC to M/s. R. Hemalatha, Advocate Sr.No.47372
+1 CC to the Special Govt., Pleader, (Taxes,
High Court, Madras Sr.No.47597

W.P.Nos.28955 and 28956 of 2016 and
WMP Nos.25027 and 25028 of 2016

MP (CO)
MD : 07/09/2016