

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.A.Nos.1318 to 1321 of 2017

and

C.M.P. Nos.18305 to 18308 of 2017

M/s.Maruthi Traders,
Rep. by its Proprietor
No.138, Sundakkamuthur Road
Coimbatore

... Appellant in all the Writ
Appeals

Vs.

Commercial Tax Officer
Perur Assessment Circle
Coimbatore

... Respondent in all the Writ
Appeals

Writ Appeals filed under Clause 15 of the Letters Patent
against the Common Order dated 30.06.2016 made in W.P. Nos.21322
to 21325 of 2016.

PRAYER IN WP.21322 TO 21324/2016

Petition Under Article 226 of the Constitution of India
issuance of writ of Certiorarified mandamus *proceedings of the
respondent in TIN 33381923053/ 2012-13, 2013-14 dated 06.01.2016
and direct the respondent to pass fresh orders by providing an
opportunity to cross examine the alleged parties who had issued
sale bill in the name of the petitioner and also providing
opportunity of personal hearing to the petitioner*

PRAYER IN WP.21325/2016

Petition Under Article 226 of the Constitution of India
issuance of writ of Certiorarified mandamus *To call for the
records of the respondent and quash the assessment proceedings
of the respondent in TIN 33381923053/ 2007-08 dated 06.01.2016
as illegal and direct the respondent to furnish the details of*

informations obtained form the departmental WEB SITE for the mismatch of the alleged purchased of the petitioner based on the various judicial pronouncements of this Court.

For Appellant : Mr.C.Baktha Siromoni
For Respondent : Mrs.Narmada Sampath
Special Govt. Pleader (Taxes)

O R D E R
(made by S.MANIKUMAR, J.)

Material on record discloses that W.P. Nos.21322 to 21325 of 2016, have been filed challenging the assessment proceedings of the Commercial Tax Officer, Perur Assessment Circle, Coimbatore for the assessment years 2012-2013, 2013-2014, 2014-2015 and 2007-2008 respectively. Consequently, appellant has sought for a direction to the Commercial Tax Officer, Perur Assessment Circle, Coimbatore, the assessing authority, to pass fresh orders by providing an opportunity to cross-examine parties alleged to have issued sale bills in the name of the appellant/petitioner and also to provide personal hearing to the appellant.

2. Writ court, has observed that when pre-revision notice was issued to the appellant, the same was returned with a postal endorsement that "no such addressee in the door number", and when the appellant had refused to receive the notice, not cooperated with the department, the conduct of the dealer cannot be ignored. Adverting to the contention of the appellant that they have surrendered Registration Certificate as early as on 30.11.2011 and though, Local Delivery Book was produced to substantiate surrender of Registration Certificate, declining to accept the same as proof of surrender of Registration Certificate, and that grounds raised being questions of fact, vide common order dated 30.06.2016, dismissed the writ petitions, giving liberty to the petitioner, either to seek for rectification of the orders passed by the Commercial Tax Officer, Perur Assessment Circle, Coimbatore, respondent herein, by invoking the power under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 by filing a petition or to file an appeal before the Appellate Authority.

3. Assailing the correctness of the common order made in W.P. Nos.21322 to 21325 of 2016, instant writ appeals have been filed. Though Mr.C.Baktha Siromoni, learned counsel for the appellant, reiterated the same facts and urged this court to entertain the appeals, this court is not inclined to do so for

the reason that, on more than one occasion, the Hon'ble Supreme Court, as well as this court, held that, ordinarily, writ petitions should not be entertained when the statutes provide for an effective and alternative remedy, moreso, in revenue matters. Reference can be made to few decisions, in this regard.

3.1. 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.

3.2. 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.

3.3. 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."

3.4. 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."

3.5. 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."

3.6. 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 created 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."

3.7. 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 para 36, 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.)"

3.8. 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.

4. Even during the course of hearing of the instant appeals, Mr.C.Baktha Siromoni, learned counsel for the appellant made submissions that it was a case of mismatching, which itself fortifies the views of the writ court, that matter requires adjudication by the appropriate authority.

5. Mr.C.Baktha Siromoni, learned counsel for the appellant, submitted that rectification petition under Section 84 of the Tamil Nadu Value Added Tax Act, 2006, may not be appropriate remedy, but the writ court ought to have permitted filing of a review petition to the Joint Commissioner under Section 54 of the Tamil Nadu Value Added Tax Act, 2006. According to him, no order has been passed under Section 19 of the Tamil Nadu Value Added Tax Act, 2006 and therefore, if at all, the petitioner has to approach the appropriate authority, the same could be done only by filing a revision petition before the Joint Commissioner under Section 54 of the Tamil Nadu Value Added Tax

Act, 2006, and not an appeal.

6. Having regard to the above arguments, we deem it fit to have a cursory look of the statutory provisions.

7. As similar assessment orders are passed, suffice to consider one of the assessment orders passed by the Commercial Tax Officer, Perur Assessment Circle, Coimbatore, dated 6.1.2016, for the year 2012-13, reads as under:

"Sales suppression for the year 2012-2013

On cross verification of their sales details taken from other your Annexure-I, it was found that though they have made sales to the following dealers but suppressed by them in a malafide intention to evade payment of tax by not filing the returns as required under Sec. 19 of the TNVAT Act, 2006.

From the reading of the assessment order for the year 2012-13, it could be deduced that there was a prima facie opinion of sales suppression for the year 2012-2013. Another issue considered by the Assessing Officer is local sales effected through van not reported in monthly returns.

8. Section 19 of the TNVAT Act, 2006 is reproduced.

19. Input tax credit : - (1) There shall be input tax credit of the amount of tax paid under this Act, by the registered dealer to the seller on his purchases of taxable goods specified in the First Schedule :

[Provided that the registered dealer, who claims input tax credit, shall establish that the tax due On purchase of goods has actually been paid in the manner prescribed by the registered dealer who sold such goods and that the goods have actually been delivered Provided further that the tax deferred under section 32 shall be deemed to have been paid under this Act for the purpose of this sub-section.]

(2) Input tax credit shall be allowed for the purchase of goods made within the State from a registered dealer and which are for the purpose of -

(i) re - sale by him within the State; or
(ii) use as input in manufacturing or processing of goods in the State; or
(iii) use as containers, labels and other materials for packing of goods in the State; or
(iv) use as capital goods in the manufacture of taxable goods.

(v)4 [Omitted] sale in the course of inter - State trade or commerce falling under sub - section (1) of section 8 of the Central Sales Tax Act, 1956 (Central

Act 74 of 1956)];

(v) sale in the course of inter-State trade or commerce falling under sub-section (1) and (2) of section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956)

(vi) Agency transactions by the principal within the State in the manner as may be prescribed 4 [Omitted] [Provided that Input Tax Credit shall be allowed in excess of three per cent of tax for the purpose specified in clause (v).]

(3) (a) Every registered dealer, in respect of purchases of capital goods, 2 [for use in the manufacture of taxable goods], shall be allowed input tax credit in the manner prescribed.

(b) Deduction of such input tax credit shall be allowed only after the commencement of commercial production and over a period of three years in the manner as may be prescribed. After the expiry of three years, the unavailed input tax credit shall lapse to Government.

(c) Input tax credit shall be allowed for the tax paid under section 12 of the Act, subject to clauses (a) and (b) of this sub - section.

(4) Input tax credit shall be allowed on tax paid [or Payable] in the State on the purchase of goods, in excess of 1 [five percent] 1 [three] of tax relating to such purchases subject to such conditions as may be prescribed, -

(i) for transfer to a place outside the State otherwise than by way of sale; or

(ii) for use in manufacture of other goods and transfer to a place outside the State, otherwise than by way of sale:

Provided that if a dealer has already availed input tax credit there shall be reversal of credit against such transfer.

(5) (a) No input tax credit shall be allowed in respect of sale of goods exempted under section 15

(b) No input tax credit shall be allowed on tax paid [or Payable] in other States or Union Territories on goods brought into this State from outside the State.

[Omitted] (c) No input tax credit shall be allowed on the purchase of goods sold as such or used in the manufacture of other goods and sold in the course of inter - State trade or commerce falling under sub - section (2) of section 8 of the Central Sales Tax Act, 1956. (Central Act 74 of 1956).]

(6) No input tax credit shall be allowed on

purchase of capital goods, which are used exclusively in the manufacture of goods exempted under section 15.

[Provided that on the purchase of capital goods which are used in the manufacture of exempted goods and taxable goods, in put tax credit shall be allowed to the extent of its usage in the manufacture of taxable goods in the manner prescribed.]

(7) No registered dealer shall be entitled to input tax credit in respect of -

(a) goods purchased and accounted for in business but utilised for the purpose of providing facility to the proprietor or partner or director including employees and in any residential accommodation; or

(b) purchase of all automobiles including commercial vehicles, two wheelers and three wheelers and spare parts for repair and maintenance thereof, unless the registered dealer is in the business of dealing in such automobiles or spare parts; or

(c) purchase of air - conditioning units unless the registered dealer is in the business of dealing in such units.

(8) No input tax credit shall be allowed to any registered dealer in respect of any goods purchased by him for sale but given away by him by way of free sample or gift or goods consumed for personal use.

(9) No input tax credit shall be available to a registered dealer for tax paid Omitted [or Payable] at the time of purchase of goods, if such

(i) goods are not sold because of any theft, loss or destruction, for any reason, including natural calamity. If a dealer has already availed input tax credit against purchase of such goods, there shall be reversal of tax credit; or

(ii) inputs destroyed in fire accident or lost while in storage even before use in the manufacture of final products; or

(iii) inputs damaged in transit or destroyed at some intermediary stage of manufacture.

(10) (a) The registered dealer shall not claim input tax credit until the dealer receives an original tax invoice duly filled, signed and issued by a registered dealer from whom the goods are purchased, containing such particulars, as may be prescribed, of the sale evidencing the amount of input tax.

(b) If the original tax invoice is lost, input

tax credit shall be allowed only on the basis of duplicate or carbon copy of such tax invoice obtained from the selling dealer subject to such conditions as may be prescribed.

(11) In case any registered dealer fails to claim input tax credit in respect of any transaction of taxable purchase in any month, he shall make the claim before the end of the financial year or before ninety days from the date of purchase, whichever is later.

(12) Where a dealer has availed credit on inputs and when the finished goods become exempt, credit availed on inputs used therein, shall be reversed.

(13) 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 shall, after making such enquiry as it thinks fit and giving a reasonable opportunity of being heard, deny the benefit of input tax credit to such registered dealer who has claimed input tax credit based on such invoice, bill or cash memorandum from such date.

(14) Where the business of a registered dealer is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the business to a joint venture with the specific provision for transfer of liabilities of such business, then, the registered dealer shall be entitled to transfer the input tax credit lying unutilized in his accounts to such sold, merged, amalgamated, leased or transferred concern. The transfer of input tax credit shall be allowed only if the stock of inputs, as such, or in process, or the capital goods is also transferred to the new ownership on which credit has been availed of are duly accounted for, subject to the satisfaction of the assessing authority.

(15) Where a registered dealer has purchased any taxable goods from another dealer and has availed input tax credit in respect of the said goods and if the registration certificate of the selling dealer is cancelled by the appropriate registering authority, such registered dealer, who has availed by way of input tax credit, shall pay the amount availed on the date from which the order of cancellation of the registration certificate takes effect. Such dealer shall be liable to pay, in addition to the amount due, interest at the rate of two per cent, per month, on the amount of tax so payable, for the period

commencing from the date of claim of input tax credit by the dealer to the date of its payment.

(16) The input tax credit availed by any registered dealer shall be only provisional and the assessing authority is empowered to revoke the same if it appears to the assessing authority to be incorrect, incomplete or otherwise not in order.

(17) If the input tax credit determined by the assessing authority for a year exceeds tax liability for that year, the excess may be adjusted against any outstanding tax due from the dealer.

(18) The excess input tax credit, if any, after adjustment under sub - section (17), shall be carried forward to the next year or refunded, in the manner, as may be prescribed.

(19) Where any registered dealer has availed input tax credit and has goods remaining unsold at the time of stoppage or closure of business, the amount of tax availed shall be reversed on the date of stoppage or closure of such business and recovered.

(20) Notwithstanding any thing contained in this section, where any registered dealer has sold goods at a price lesser than the price of the goods purchased by him, the amount of the input tax credit over and above the output tax of those goods shall be reversed.

(21) Notwithstanding anything contained in sub - section (2), in the case of purchase of goods made within the State from a registered dealer who has availed fiscal incentive in the form of refund of gross or net output tax as Industrial Investment Promotion subsidy or soft loan sanctioned by the Government, input tax credit shall be allowed only to the extent of aggregate of output tax paid on the re-sale of such goods and the sale of goods manufactured out of such goods, within the State or in the course of inter-State trade or commerce.

Section 22 of the Tamil Nadu Value Added Tax Act, 2006 deals with deemed assessment and procedure to be followed by the assessing authority, which reads as under:

22 [Deemed Assessment and] procedure to be followed by the assessing authority. (1) The assessment in respect of the dealer shall be on the basis of return relating to his turnover submitted in the prescribed manner within the prescribed period.

(2) The assessing authority shall accept the returns submitted for the year, by the dealer, if

the returns are in the prescribed form and accompanied with the prescribed documents and proof of payment of tax. Every such dealer shall be deemed to have been assessed for the year on the 31st day of October of the succeeding year -

Provided that in respect of such returns submitted for the years 2006 - 2007, 2007 - 2008, 2008 - 2009, 2009 - 2010 and 2010 - 2011, on which assessment order are not passed shall be deemed to have been assessed on the 30th day of June 2012.

Prior to the Amendment made by the Fifth Amendment Act 23 of 2012, notified by GO.No.82. as effective from 19th June 2012, this sub - section was as under :

- (2) The assessing authority shall accept the returns submitted for the year, by the dealer, if the returns are accompanied by the proof of payment of tax and the documents prescribed, and on such acceptance, the assessing authority shall pass an assessment order.

(3) Notwithstanding anything contained in sub - section (2), not exceeding twenty per cent of the total number of such assessments shall be selected by the Commissioner in such manner as may be prescribed for the purpose of detailed scrutiny regarding the correctness of the returns submitted by the dealer and in such cases, revision of assessment shall be made, wherever necessary.

(4) If no return is submitted by the dealer for any period of the year or if the return filed is incomplete or incorrect, or if not accompanied with any of the documents prescribed or proof of payments of tax, the assessing authority shall, after making such enquiries as it may consider necessary, assess the dealer to the best of its judgment, subject to such conditions as may be prescribed, after the completion of that year: Provided that before taking action under this sub-section, the dealer shall be given a reasonable opportunity of being heard.

(5) In addition to the tax assessed under sub-section (4), the assessing authority shall, in the order of assessment passed under sub-section (4) or by a separate order, direct the dealer to pay by way of penalty, a sum which shall be, one hundred and fifty percent of the difference of the tax assessed and the tax already paid as per the returns:

Provided that no penalty under this sub - section shall be imposed after the period of six years from the date of assessment order unless the dealer

affected has had a reasonable opportunity of showing cause against such imposition.

Explanation.

For the purpose of levy of penalty under this sub - section, the tax assessed on the following kinds of turnover shall be deducted from the tax assessed under sub - section (4):

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(i) Any turnover representing additions to the turnover as per the returns made by the assessing authority without reference to any specific concealment of turnover;

(ii) Any turnover estimated by the assessing authority with reference to any specific concealment of turnover as per the returns;

(iii) Any turnover on which tax is paid at the concessional rate subject to the condition of furnishing any declaration but where such declaration could not be furnished at the time of assessment.

(5) In addition to the tax assessed under sub - section (4), the assessing authority shall in the same order of assessment passed under sub - section (4) or by a separate order, direct the dealer to pay by way of penalty, a sum which shall be, in the case of failure to submit return, one hundred and fifty percent of the tax assessed:

Provided that no penalty under this sub - section shall be imposed after the period of five years from the date of assessment order under this Section unless the dealer affected has had a reasonable opportunity of showing cause against such imposition.

(6) (a) Any dealer assessed under sub - section (4) may, within a period of thirty days from the date of service of the assessment order, apply to the assessing authority for re

- assessment, along with the correct and complete return as prescribed. On such application, the assessing authority shall, if it is satisfied that the failure to submit the return in time was due to reasons beyond the control of the applicant, cancel the assessment made and make a fresh assessment on the basis of the return submitted:

Provided that no application shall be entertained under this sub - section unless it is accompanied by satisfactory proof of the payment of tax admitted by the applicant to be due or any such instalment

thereof as might have become payable, as the case may be.

(b) If the amount of tax on the basis of the cancelled assessment has already been collected and if the amount of tax arrived at as a result of the fresh assessment is different from it, any amount over paid by the dealer shall be refunded to him without interest, or the further amount of tax, if any, due from him shall be collected in accordance with the provisions of this Act, as the case may be.

(c) Penalty, if any, imposed and collected under sub - section (5), shall be refunded to the dealer without interest on cancellation of the order of original assessment.

9. Section 51 of the TNVAT Act, 2006, deals with filing of an appeal to the Appellate Deputy Commissioner and it reads as follows:

51. Appeal to Appellate Deputy Commissioner.

(1) Any person objecting to an order passed by the appropriate authority under section 22, section 24, section 26, sub - sections (1), (2), (3) and (4) of section 27, section 28, section 29, section 34 or sub - section (2) of section 40 other than an order passed by a Deputy Commissioner (Assessment) may, within a period of thirty days from the date on which the order was served on him, in the manner prescribed, appeal to the Appellate [Deputy] Commissioner having jurisdiction:

Provided that the Appellate Deputy Commissioner may, within a further period of thirty days admit an appeal presented after the expiration of the first mentioned period of thirty days if he is satisfied that the appellant had sufficient cause for not presenting the appeal within the first mentioned period:

Provided further that in the case of an order under section 22, section 24, section 26, sub - sections (1), (2), (3) and (4) of section 27, section 28 or section 29, no appeal shall be entertained under this sub - section unless it is accompanied by satisfactory proof of the payment of the tax admitted by the appellant to be due or of such installments thereof as might have become payable, as the case may be, and twenty five per cent of the difference of the tax assessed by the assessing authority and the tax admitted by the appellant.

(2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by such fee not exceeding one

hundred rupees as may be prescribed.

(3) In disposing of an appeal, the Appellate Deputy Commissioner may, after giving the appellant a reasonable opportunity of being heard, and for the sufficient reasons to be recorded in writing -

(a) in the case of an order of assessment

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(i) confirm, reduce, enhance or annul the assessment or the penalty or both;

(ii) set aside the assessment and direct the assessing authority to make a fresh assessment after such further inquiry as may be directed; or

(iii) pass such other orders as he may think fit; or

b) in the case of any other order, confirm, cancel or vary such order:

Provided that at the hearing of any appeal, the appropriate authority shall have the right to be heard either in person or by a representative.

(4) Notwithstanding that an appeal has been preferred under sub - section (1), the tax shall be paid in accordance with the order of assessment against which the appeal has been preferred:

Provided that the Appellate Deputy Commissioner may, in his discretion, give such directions as he thinks fit in regard to the payment of the tax before the disposal of the appeal, if the appellant furnishes sufficient security to his satisfaction, in such form and in such manner as may be prescribed:

Provided further that the directions given under the first proviso shall stand vacated, if no order is passed under sub - section (3) within a period of one hundred and eighty days of the issue of order under the said proviso.

10. Section 52 deals with filing of an appeal to the Appellate Joint Commissioner

52. Appeal to Appellate Joint Commissioner: (1)

Any person objecting to an order passed by the Deputy Commissioner (Assessment) under section 22, section 24, section 26, sub - sections (1), (2), (3) and (4) of section 27, section 28, section 29, section 34 or sub - section (2) of section 40 may, within a period of thirty days from the date on which the order was served on him in the manner prescribed, appeal to the Appellate Joint Commissioner having jurisdiction:

Provided that the Appellate Deputy Commissioner may within a further period of thirty days admit an appeal presented after the expiration of the first

mentioned period of thirty days if he is satisfied that the appellant had sufficient cause for not presenting the appeal within the first mentioned period:

Provided further that in the case of an order under section 22, section 24, section 26 or sub - sections (1), (2), (3) and (4) of section 27, section 28 or section 29, no appeal shall be entertained under this sub - section unless it is accompanied by satisfactory proof of the payment of the tax admitted by the appellant to be due or of such instalments thereof as might have become payable, as the case may be, and twenty - five per cent of the difference of the tax assessed by the assessing authority and the tax admitted by the appellant (2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by such fee not exceeding one hundred rupees, as may be prescribed.

(3) In disposing of an appeal, the Appellate Deputy Commissioner may, after giving the appellant a reasonable opportunity of being heard, and for the sufficient reasons to be recorded in writing -

- (a) in the case of an order of assessment --
- (i) confirm, reduce, enhance or annul the assessment or the penalty or both;
 - (ii) set aside the assessment and direct the Assistant Commissioner (Assessment) to make a fresh assessment after such further inquiry as may be directed; or
 - (iii) pass such other orders as he may think fit; or
- (b) in the case of any other order, confirm, cancel or vary such order:

Provided that at the hearing of any appeal, the Assistant Commissioner (Assessment) shall have the right to be heard either in person or by a representative.

(4) Notwithstanding that an appeal has been preferred under sub - section (1), the tax shall be paid in accordance with the order of assessment against which the appeal has been preferred:

Provided that the Appellate Deputy Commissioner may, in his discretion, give such directions as he thinks fit, in regard to the payment of the tax before the disposal of the appeal, if the appellant furnishes sufficient security to his satisfaction, in such manner, as may be prescribed:

Provided further that the directions given under the first proviso shall stand vacated, if no order is passed under sub - section (3) within a period of one

hundred and eighty days of the issue of order under the said proviso

As per Section 51 of the Act, any person objecting to the order passed by the appropriate authority under Section 22, Section 24, Section 26, sub - sections (1), (2), (3) and (4) of section 27, section 28, section 29, section 34 or sub - section (2) of section 40 other than an order passed by a Deputy Commissioner (Assessment) may, within a period of thirty days from the date on which the order was served on him, in the manner prescribed, appeal to the Appellate [Deputy] Commissioner having jurisdiction: Provided that the Appellate Deputy Commissioner may, within a further period of thirty days admit an appeal presented after the expiration of the first mentioned period of thirty days if he is satisfied that the appellant had sufficient cause for not presenting the appeal within the first mentioned period. Whereas, in Section 54 of the Act, any person objecting to an order passed Or Proceeding recorded under this Act for which an appeal has not been provided for in section 51 or section 52 may within a period of thirty days from the date on which a copy of the order or proceeding was served on him, in the manner prescribed file an application for revision of such order or proceeding to the Joint Commissioner: Provided that the Deputy Commissioner may within a further period of thirty days admit an application for revision presented after the expiration of the first mentioned period of thirty days, if he is satisfied that the applicant had sufficient cause for not presenting the application within the first mentioned period.

11. Though the learned counsel for the petitioner contended that the order is passed under Section 19 of the Act, and hence revision is the appropriate remedy, reading of Sections 51 and 52 of the Act, prima facie indicates that orders passed under Sections 22, 24, 26, sub sections (1)(2)(3)(4) of Sections 27, 28, 29, 34 or sub section 2 of Section 40 by an appropriate authority, the Asst Deputy Commissioner, are appealed to the Deputy Commissioner, and orders passed by the Deputy Commissioner, under the abovesaid provisions, are appealable to the Joint Commissioner.

12. Section 54 of TNVAT Act, 2006 deals with powers of the revision of the Joint Commissioner.

54. Powers of revision of Joint Commissioner. --

(1) Any person objecting to an order passed Or Proceeding recorded under this Act for which an appeal has not been provided for in section 51 or section 52 may within a period of thirty days from the date on which a copy of the order or proceeding was served on him, in the manner prescribed file an application for revision of such order or proceeding

to the Joint Commissioner:

Provided that the Deputy Commissioner may within a further period of thirty days admit an application for revision presented after the expiration of the first mentioned period of thirty days, if he is satisfied that the applicant had sufficient cause for not presenting the application within the first mentioned period.

(2) An application for revision shall be in the prescribed form and shall be verified in the prescribed manner.

(3) On admitting an application for revision, the Deputy Commissioner may call for and examine the record of the order or proceeding against which the application has been preferred and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, pass such order thereon as he thinks fit.

(4) Notwithstanding that an application has been preferred under sub - section (1), the tax, fee or other amount shall be paid in accordance with the order or proceeding against which the application has been preferred:

Provided that the Joint Commissioner may in his discretion give such directions as he thinks fit, in regard to the payment of such tax, fee or other amount before the disposal of revision, if the applicant furnishes sufficient security to his satisfaction in such form and in such manner as may be prescribed.

(5) No order under this section adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

13. Section 84 of the TNVAT Act, 2006, reads thus:

84. Power to rectify any error apparent on the face of the record. -- (1) An assessing authority or an appellate or revising authority (including the Appellate Tribunal) may, at any time within Six years from the date of any order passed by it, rectify any error apparent on the face of the record:

Provided that no such rectification which has the effect of enhancing an assessment or any penalty shall be made unless such authority has given notice to the dealer and has allowed him reasonable opportunity of being heard.

(2) Where such rectification has the effect of reducing an assessment or penalty, the assessing authority shall make any refund, which may be due to the dealer.

(3) Where any such rectification has the effect of enhancing an assessment or penalty, the assessing authority shall give the dealer a revised notice of assessment or penalty and thereupon the provisions of this Act and the Rules made there under shall apply as if such notice had been given in the first instance.

(4) The powers under sub - section (1) may be exercised by the assessing authorities even though the original order of assessment, if any, passed in the matter has been the subject matter of an appeal or revision.

(5) The provisions of this Act relating to appeal and revision shall apply to an order or rectification made under this section as they apply to the order in respect of which such order of rectification has been made.

14. While dismissing the writ petitions, writ court, has granted liberty to the appellant, either to seek for rectification of the orders passed by the Commercial Tax Officer, Perur Assessment Circle, Coimbatore/respondent herein by invoking the power under Section 84 of the TNVAT Act, 2006 by filing a Rectification Petition or to file an appeal before the Appellate Authority challenging the impugned orders of assessment.

15. It could be seen that the common order made in W.P. Nos.21322 to 21325 of 2016 dated 30.06.2016 does not refer to Sections 51, 52 or 54 of the TNVAT Act, 2006, but merely granted liberty to file an appeal. If according to the appellant, revision under Section 54 of the Act is the only remedy available to the appellant and not an appeal as indicated, it is always open to the petitioner to challenge the assessment orders for the years 2012-2013, 2013-2014, 2014-2015 and 2007-2008, respectively in the manner provided therefor, under the Statute and that there is no need for this court to say as to whether a revision or appeal, as the case may be, would be the appropriate remedy, which the appellant has to take recourse.

16. With the above observation, all the writ appeals are dismissed. However, there shall be no order as to cost. Consequently, the civil miscellaneous petitions are closed.

17. Mr.C.Baktha Siromoni, learned counsel for the appellant submitted that appropriate remedy as provided in the statute would be resorted to, within two weeks from the date of receipt of a copy of this order. Submission of the learned counsel for the appellant is placed on record. Two weeks time is granted. Registry is directed to return the original assessment orders dated 06.01.2016 in TIN 33381923053 for the years 2012-13, 2013-14, 2014-15 and 2007-08, by getting attested copies from the learned counsel for the appellant.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

asr
TO

THE COMMERCIAL TAX OFFICER,
PERUR ASSESSMENT CIRCLE,
COIMBATORE.

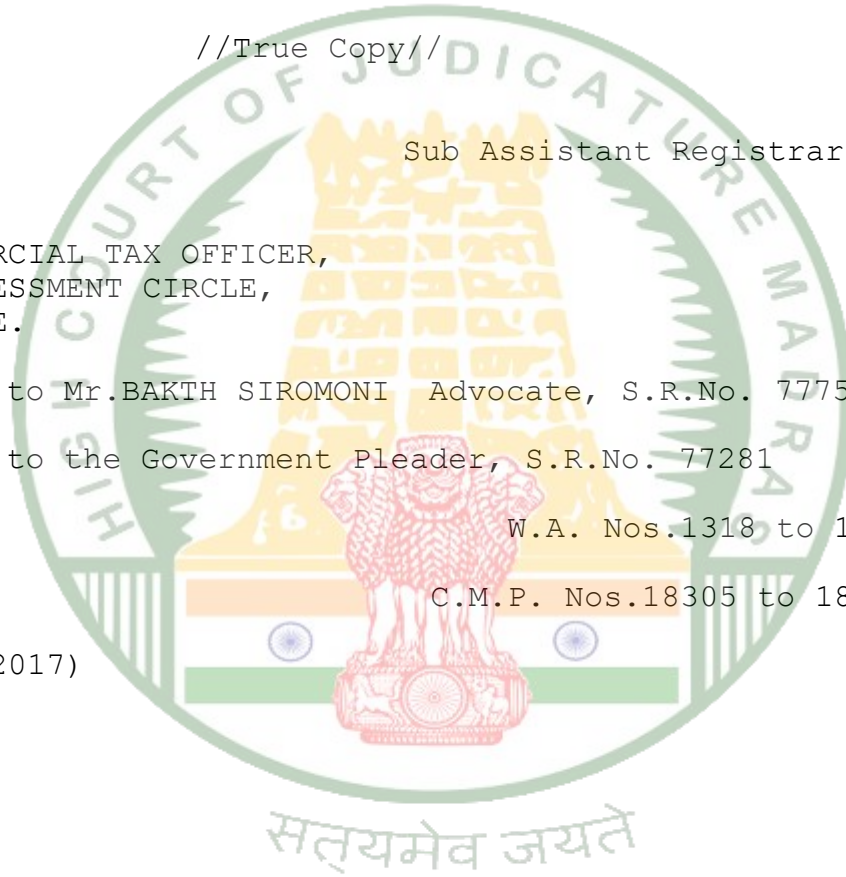
+1cc to Mr.BAKTH SIROMONI Advocate, S.R.No. 77756

+1cc to the Government Pleader, S.R.No. 77281

W.A. Nos.1318 to 1321 of 2017
and

C.M.P. Nos.18305 to 18308 of 2017

GMI (CO)
TR(29/11/2017)



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