BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.02.2017
CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.2751 of 2017
and W.M.P.(MD) No.2279 of 2017

M/s.V.V.V. and Sons Edible Oils Limited,
rep. by its Director,
443, Bazaar, Virudhunagar. ... Petitioner

Vs.

The Commercial Tax Officer - 1 (FAC),
Virudhunagar. ... Respondent

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari, calling for the records of the respondent in A3/140/2017 and quash the proceedings dated 09.02.2017 issued therein.

For Petitioner :Mr.R.L.Ramani
Senior Counsel for
M/s.S.Raja Jeya Chandra Paul
For Respondent :Mr.Raja Karthikeyan
Additional Government Pleader

O R D E R

The prayer in the writ petition is for a Writ of Certiorari, calling for the records of the respondent in A3/140/2017 and quash the proceedings dated 09.02.2017 issued therein.

2.Mr.Raja Karthikeyan, the learned Additional Government Pleader accepts notice for the respondents.

3.By consent of both sides, the main writ petition itself is taken up for final disposal.

4.As against the order of assessment made against the petitioner, the petitioner has already approached this Court. Ultimately the issue was decided by the Division Bench of this Court dated 18.12.2015, in **W.A.(MD) Nos.1372 to 1374 of 2015** in the matter of **M/s.V.V.V. and Sons Edible Oil Limited v. The Commercial Tax Officer - 1 (FAC), Virudhunagar.** By order dated 18.12.2015, a Division Bench of this Court has passed the following orders:

> "8. However it is the contention of the learned Senior Counsel for the appellant that the orders of assessment passed by the respondent, are completely bereft of any application of mind and the manner in which he had dealt with the objections, speaks volumes about the mala

fide intention on the part of the Assessing Officer. The learned Senior Counsel drew our attention to some of the observations made by the Assessing Officer in the orders of assessment.

9. In one place, the Assessing Officer has stated that the assesee had no nerve to admit that the Enforcement Wing Officers are quasi-judicial officers. In another place, the Assessing Officer has translated a Tamil proverb into English, which translation is not only poor in linguistic but also poor in taste.

10. Therefore we cannot completely discard the grievance of the appellant about the manner in which the Assessing Officer passed the orders, as unjustified.

11. But unfortunately the grievance of the appellant as against the Assessing Officer is not something that still entitles the appellant to bye- pass the alternative remedy of appeal. Therefore despite the fact that we are unable to approve the manner in which the Assessing Officer dealt with the objections, we do not wish to entertain the writ appeals.

12. But it appears from the orders of assessment that the total liability towards tax slapped upon the appellant for all the three assessment years works out to about Rs.75,00,00,000/- (Rupees Seventy Five Crores only). Therefore the appellant may have to make a pre-deposit of 25% of the entire demand if an appeal is to be entertained. Normally another 25% will be demanded for the grant of stay. Since that may completely ruin the running industry, we are of the view that some reprieve can be given to the appellant. Therefore the writ appeals are disposed of to the following effect:

(i) The appellant shall file statutory appeals within a period of four weeks from the date of receipt of a copy of this judgment, along with 25% of the tax demanded under the impugned assessment orders;

(ii) Upon filing of such appeals, together with 25% of the tax demanded, the appellate authority shall deal with the appeals independently with reference to the facts as well as law and dispose of them within further period of three months; and

(iii) Till then, the appellant shall have the benefit of an order of interim stay of the demand in respect of the remaining portions. Consequently, the connected miscellaneous petitions are closed. No costs."

5.In fact pursuant to the said directives issued by the Division Bench of this Court, especially at paragraph 12, the petitioner should have approached the appellate authority by filing appeal with payment of 25% of the demand/ assessment. However, the petitioner had approached the Hon'ble Supreme Court in S.L.P. (C) No.4609 to 4611 of 2016, challenging the order of the Division Bench dated 18.12.2015, parallely separate Writ Petition in W.P.(C) No.91 of 2015 has also been filed, wherein the statutory provision which requires compulsory deposit of 25% of the demand/assessment amount at the time of filing appeal and at the time of seeking stay from the appellate authority, have been challenged. Both the writ petition as well as the Special Leave Petition had been finally disposed of by the Hon'ble Apex Court by their Lordships' order dated 27.09.2016, wherein insofar as the writ petition filed by the petitioner under Article 32 of the Constitution of India is concerned, the following order is passed:

> "Heard Mr.R.L.Ramani, learned senior counsel appearing for the petitioner seeks leave of this Court to withdraw the writ petition to file appropriate petition before the High Court to challenge the constitutional validity of the provisions pertaining to pre-deposit.
>
> The writ petition is permitted to be withdrawn."

Insofar as S.L.P. (C) No.4609-4611 of 2016 is concerned, the following orders are passed:

> "Having heard learned counsel for the parties, we are of the considered opinion that the petitioner should approach the statutory authority under Section 58 of Tamil Nadu value Added Tax Act, 2006. If the appeal is preferred within a period of six weeks hence, the appellate authority shall deal with the appeal on merits and not to reject the same on the ground of limitation at threshold.
>
> The special leave petitions are, accordingly, disposed of."

6.In effect, the judgment of the Division Bench dated 18.12.2015, has been confirmed with liberty to the petitioner to approach the appellate authority within a period of six weeks and if such an appeal is being filed by the petitioner, the same shall be directed to be entertained without rejecting the same on the ground of limitation. Pursuant to the said order of the Hon'ble Apex Court, the petitioner has filed appeal before the appellate authority and at the time of filing the appeal, on 01.11.2016, the petitioner has also paid 25% of demand/assessment amount as pre-conditional deposit for filing the appeal. Thereafter, the appeal has been entertained and according to the learned Senior Counsel appearing for the petitioner it is posted for further hearing on 20.02.2017. Further, in the mean while, the respondent i.e., original assessing authority has passed the present impugned order dated 09.02.2017, wherein the respondent has stated that since the petitioner has not complied with the direction issued by the Division Bench of this Court in the order dated 18.12.2015, by making 25% pre-conditional deposit and filing appeal within four weeks time stipulated, the time granted by the Division Bench since has been exhausted, there is no stay for initiating the recovery proceedings against the arrears amount regarding the assessment year 2011-12 to 2013-14 and therefore, the impugned order proceeded to demand from the petitioner that the arrears amount shall be paid within seven days from the date of receipt of a copy of the impugned order dated 09.02.2017. Challenging the said order, the present Writ Petition has been filed.

7.In this regard, the learned Senior Counsel for the petitioner would submit that as per paragraph 12(iii) of the judgment of the Division Bench of this Court dated 18.12.2015, stay was granted by this Court against the original assessment order in the said writ appeals. As against the said order, the petitioner had approached the Apex Court by way of Special Leave Petition and though initially notice was issued, subsequently Special Leave Petition filed by the petitioner were disposed of by order of the Hon'ble Apex Court dated 27.09.2016. While disposing the Special Leave Petition, it was specifically directed that the petitioner can approach the appellate authority within a period of six weeks and if such an appeal is filed, the same shall be entertained and shall not be rejected on mere limitation. Pursuant to which, appeals were filed and 25% demand/assessment amount was also paid on 01.11.2016. The appeals filed by the petitioner have been entertained and it is posted for hearing on 20.02.2017. Therefore, the learned Senior Counsel appearing for the petitioner would submit that the order passed by the Hon'ble Apex Court is in continuation to the order passed by the Division Bench dated 18.12.2015 and whatever order passed by the Division Bench especially at paragraph 12 of the said judgment would be in tact and in operation and merely because four weeks time granted by the Division Bench was over, within which the appeal was not filed because of approaching of the Hon'ble Apex Court by the petitioner, that will not take away the right accrued on the petitioner to approach the appellate authority. In view of the specific directions giving liberty to the petitioner to approach appellate authority within six weeks and within six weeks period since the appeal has been filed and entertained, where 25% pre-conditional deposit has also been made, the present impugned order passed by the said authority either would be superfluous or beyond jurisdiction or run contra to the orders at paragraph 12 of the Division Bench judgment. Therefore, the learned Senior Counsel appearing for the petitioner would submit that the impugned order is liable to be interfered with.

8.Per contra, the learned Additional Government Pleader appearing for the respondent would submit that no doubt at paragraph 12 of the order dated 18.12.2015, the Division Bench of this Court has issued three directions. Firstly, the petitioner shall file statutory appeal within four weeks time and on filing the appeal they should deposit 25% of the demand/assessment amount. Secondly, on payment of assessed amount of 25%, the appellate authority was directed to deal with the appeals independently. Thirdly, till the filing of appeals within the time stipulated by the Division Bench the stay granted by the Court at paragraph 12(3) dated 18.12.2015, would be in force. The said stay has not been subsequently extended by this Court. And no petition was filed in this regard by the petitioner and there is no specific mentioning as to whether the stay granted by the Division Bench for four weeks is continuing or has been further extended by the orders of the

Hon'ble Apex Court. Therefore, the impugned order is fully justifiable. In the absence of any express order extending the stay beyond four weeks time, as has been given by the Division Bench order dated 18.12.2015, the respondent assessing authority has every right to proceed pursuant to the original order of assessment and therefore, the action on the part of the respondent in issuing the impugned order cannot be found fault with. Therefore, the learned Additional Government Pleader would submit that the impugned order is sustainable one.

9.This Court has considered the said rival submissions made by both sides.

10.It is no doubt originally as per paragraph 12 of the order dated 18.12.2015, the Division Bench has given three directions. Firstly, appeal shall be filed by the petitioner within four weeks along with 25% of the tax demanded under the impugned assessment order. Secondly, upon filing the appeal together with 25% tax demanded already, the appellate authority shall decide the same independently and dispose of the same within a further period of three months. Till then, the petitioner have the benefit of an order of interim stay in respect of the remaining demand. In this regard, this Court finds the word 'till then' as has been employed in paragraph 12(3) of the order dated 18.12.2015, is “till the disposal of the appeals by the appellate authority”. As per the time schedule prescribed by the Division Bench of this Court, four weeks time was granted to file appeals and there was three months time to dispose of the appeals. Therefore, altogether there are four months period available for the purpose of deciding the appeals. Till such time stay granted would be in operation.

11.The said time period has not been worked out in view of the Special Leave petition filed by the petitioner before the Hon'ble Apex Court, where final orders were passed on 27.09.2016, wherein it has been given six weeks time to approach the authority with a rider meaning that if such appeals are not filed within such time, the time shall not be extended beyond that. In pursuant to the same, appeals were filed along with 25% amount demanded and the appeals were also entertained by the appellate authority. Therefore, the four weeks time given by the Division Bench through order dated 18.12.2015 has now been modified or extended by six weeks time either from the date of the order of the Hon'ble Apex Court or from the date of receipt of copy of the order from the Hon'ble Apex Court. At any rate, the appeals have been filed and entertained. Therefore, it shall be construed that the appeals have been filed within six weeks as has been directed by the Hon'ble Supreme Court. Once the appeals have been entertained now the only limitation left is three month outer time limit as given in the order dated 18.12.2015, within which the appeals shall be disposed of by the appellate authority. That is the reason why the appellate authority, as informed by the learned Senior Counsel appearing for the petitioner, has fixed the date of hearing on 20.02.2017. Therefore, within the three months time stipulated in the said order of the Division Bench, the appeals would be expeditiously considered and decided. In view of the time stipulation, it has to be scrupulously followed by the petitioner as well the appellate authority are concerned. But, a different interpretation is sought to be given by the respondent. Therefore, the impugned order is totally against the spirit of the two orders, one passed by the Hon'ble Division Bench of this Court and the another one passed by the Hon'ble Apex Court cited supra. Therefore, this Court is of the considered view that the impugned order totally runs contra to the imports of the directions of this Court dated 18.12.2015, as well the Hon'ble Apex Court order dated 27.09.2016 referred to above. In that view of the matter, the impugned order is liable to be interfered with. Accordingly, it is quashed.

12.Resultantly, the impugned order is quashed and the writ petition is allowed. However, it is made clear that the petitioner shall co-operate with the appellate authority in deciding the appeals within the said period of three months as stipulated by the Division Bench of this Court by order dated 18.12.2015. It is needless to mention that the petitioner shall be abide by whatever decision be made by the appellate authority, who decides the appeal on merits.

13.With these direction, this Writ Petition is allowed to the extend as indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(Records)

/TRUE COPY/

Sub Assistant Registrar

To

The Commercial Tax Officer - 1 (FAC),
Virudhunagar.

Copy to

The Appellate Deputy Commissioner,
Virudhunagar.
+1 cc to Mr.S.Raja Jeya Chandra Paul, Advocate, SR.No:8988

W.P.(MD)No.2751 of 2017
and W.M.P.(MD) No.2279 of 2017
17.02.2017

SJ
SVA/MR/SAR3/6P/4C/01.03.2017