

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.07.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.17066 to 17069 of 2018

and

W.M.P.Nos.20314 to 20316 of 2018

Amaravathi Exports Pvt.Ltd.,
Represented by its Director,
R.V.M.K.Prasad,
54, First Avenue, Sasthri Nagar,
Adayar, Chennai - 20.

..Petitioner in all W.Ps

vs

The Commercial Tax Officer,
Adyar Assessment Circle,
46, Greenways Road,
Chennai - 28.

.. Respondent in all W.Ps

Prayer in W.P.No.17066 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned proceedings of the Respondent in TIN 33120963090/2012-13 dated 19.09.2016 and quash the same under Article 226 of the Constitution of India and direct the respondent to pass appropriate orders on the petition dated 8.06.2018.

Prayer in W.P.No.17067 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned proceedings of the Respondent in TIN 33120963090/2013-14 dated 11.01.2017 and quash the same under Article 226 of the Constitution of India and direct the respondent to pass appropriate orders on the petition dated 8.06.2018.

Prayer in W.P.No.17068 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned proceedings of the Respondent in TIN 33120963090/2014-15 dated 21.10.2016 and quash the same under Article 226 of the Constitution of India and direct the respondent to pass appropriate orders on the petition dated 8.06.2018.

Prayer in W.P.No.17069 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ

of Certiorarified Mandamus, to call for the records of the impugned proceedings of the Respondent in TIN 33120963090/2012-13 to 2014-15 dated 12.06.2018 and quash the same under Article 226 of the Constitution of India.

For Petitioner : Mr.R.Kumar(in all W.Ps)
For Respondent : Mrs.G.Dhanamadhri
Government Advocate(Taxes)
(in all W.Ps)

C O M M O N O R D E R

The revised orders passed by the Commercial Tax Officer under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "the TNVAT Act") are under challenge in these writ petitions.

2.The learned counsel appearing on behalf of the writ petitioner vehemently contended that the very issuance of the order passed by the respondent is untenable in view of the fact that the revision is uncalled for and the assessment was already accepted and all further proceedings were dropped. Therefore, the very initiation of proceedings under Section 7 for revision is unsustainable.

3.The learned counsel for the petitioner further submitted that the writ petitioner had already submitted all his objections and required documents for the purpose of considering his case and further, the input tax was also reversed as far as the petitioner is concerned. Under these circumstances, the order deserves to be scrapped.

4.The learned Government Advocate appearing on behalf of the respondent opposed the contention by stating that the authority competent is empowered to take up the revision of the orders already passed and the impugned order is one such wherein certain discrepancies were found in assessment and accordingly, the matter was taken up by way of revision and after affording an opportunity to the writ petitioner to submit his explanation/objections, the revised orders were passed by the competent authority in proceedings dated 19.09.2016, 11.01.2017, 21.10.2016, 12.06.2018.

5.When this Court asked the question with the learned counsel appearing on behalf of the writ petitioner, why the petitioner has not preferred an appeal? The learned counsel replied by stating that in the event of preferring an appeal, the petitioner has to deposit 25% of the demanded amount. Further, when the learned counsel is of an opinion that the very issuance of the orders itself is untenable, he can very well

prefer a writ petition before this Court under Article 226 of the Constitution of India.

6.This apart, the learned counsel for the petitioner stated that the entire tax has already been taken into account and the revised orders amount to double taxation and therefore, the present writ petitions are to be entertained. However, the endeavor of the learned counsel to convince this Court on merits and demerits, need not be considered in a writ proceedings. This apart, under Section 84, application already filed by the writ petitioner was rejected by the respondent by way of a non-speaking order. Therefore, the writ petitioner has no option, but to approach this Court by way of a writ petition.

7.This Court is of an opinion that Section 51 of "the TNVAT Act" provides "an Appeal to the Appellate Deputy Commissioner" and Section 52 of "the TNVAT Act" provides "an Appeal to the Appellate Joint Commissioner". Further, Section 84 of "the TNVAT Act" provides "Power to rectify any error apparent on the face of the record". Section 84(4) of "the TNVAT Act" states that "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." Section 84(5) of "the TNVAT Act" enumerates that "the provisions of this Act relating to appeal and revision shall apply to an order of rectification made under this section as they apply to the order in respect of which such order of rectification has been made."

8.Therefore, the remedies provided under "the TNVAT Act" are two fold in respect of the facts and circumstances of the present writ petitions are concerned. The first remedy available to the writ petitioner is under Section 84(4) "the TNVAT Act". In this regard, the learned counsel for the writ petitioner made a submission that the petitioner had already submitted an application under Section 84 of "the TNVAT Act" before the same authority. However, the grievances of the writ petitioner is that the said authority has rejected the application without assigning any reasons. Therefore, this Court has to look into the provisions of Section 84(5) of "the TNVAT Act", which stipulates the aggrieved person can prefer an appeal. The appeal is provided under Section 51 of "the TNVAT Act". Thus, the writ petitioner has to prefer an appeal. All the contentions including the ground raised that the orders of rejection is non-speaking, shall be raised before the Appellate Authority.

9.The functions of the Appellate Authority under "the TNVAT Act" is quasi judicial in nature. They are empowered to conduct the proceedings by summoning the persons or calling for the documents or otherwise. Thus, the writ petitioner has to prefer an appeal against the order of revision, which is impugned in

these present writ petitions. Contrarily, the present writ petitions has been filed in order to evade the deposit of 25% of the demanded amount for preferring an appeal. The writ petitions cannot be entertained for this purpose and by wavering the right for preferring an appeal provided under the statutes.

10.This apart, in respect of W.P.Nos.17066 & 17068 of 2018, the orders impugned has been passed by the authority on 19.09.2016 & 21.10.2016 and the present writ petitions have been filed on 5th July 2018, after a lapse of about two years. Thus, these writ petitions itself are liable to be rejected on the ground of laches.

11.This Court is of a strong opinion that institutional respects are to be maintained by the constitutional Courts also. Whenever there is a provision of appeal under the statute without exhausting the remedies available under the statute, no writ petition can be entertained in a routine manner. Only on exceptional circumstances, the remedy of appeal can be waived, if there is a gross injustice or if there is a violation of fundamental rights ensured under the Constitution of India. Otherwise, all the aggrieved persons from and out of the order passed by the original authority is bound to approach the Appellate Authority. The Constitutional Courts cannot make the appeal provision as an empty formality. Every Appellate Authority created under the statute to be trusted in normal circumstances unless there is a specific allegation, which is substantiated in a writ proceedings. Thus, the institutional functions and exhausting the appeal remedies by the aggrieved persons, are to be enforced in all circumstances and writ proceedings can be entertained only on exceptional circumstances. Rule is to prefer an appeal and entertaining a writ is only an exception. This being the legal principles to be followed, this Court cannot entertain the writ petitions in a routine manner by wavering the remedy of appeal provided under the statute.

12.When an effective alternative remedy is available, a writ petition cannot be maintained

1. In City and Industrial Development Corporation v. DosuAardeshirBhiwandiwalla and Ors. MANU/SC/8250/2008 : (2009) 1 SCC 168, this Court had observed that:

The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

- (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;
- (b) the petition reveals all material facts;

- (c) the Petitioner has any alternative or effective remedy for the resolution of the dispute;
- (d) person invoking the jurisdiction is guilty of unexplained delay and laches;
- (e) ex facie barred by any laws of limitation;
- (f) grant of relief is against public policy or barred by any valid law; and host of other factors.

2. Kanaiyalal Lalchand Sachdev and Ors. vs. State of Maharashtra and Ors. (07.02.2011 - SC) : MANU/SC/0103/2011

It is well settled that ordinarily relief Under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See Sadhana Lodh v. National Insurance Co. Ltd.; Surya Dev Rai v. Ram Chander Rai and SBI v. Allied Chemical Laboratories.)

3. Commissioner of Income Tax and Ors. v. Chhabil Dass Agarwal, MANU/SC/0802/2013 : 2014 (1) SCC 603, as follows:

Para 15. 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, Titaghur Paper Mills case 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.

4. Authorized Officer, State Bank of Travancore and Ors. vs. Mathew K.C. (30.01.2018 - SC) :

The petitioner argued that the SARFAESI Act is a complete code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions, the remedy of appeal by the aggrieved under Section 17 before the Debt Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section 18. The High Court ought not to have entertained the writ petition in view of the adequate alternate statutory remedies available to the Respondent. The interim order was passed on the very first date, without an opportunity to the Appellant to file a reply. Reliance was placed on *United Bank of India vs. Satyawati Tandon and others*, 2010 (8) SCC 110, and *General Manager, Sri Siddeshwara Cooperative Bank Limited and another vs. Iqbal and others*, 2013 (10) SCC 83. The writ petition ought to have been dismissed at the threshold on the ground of maintainability. The Division Bench erred in declining to interfere with the same. The Supreme Court agreed to the arguments and held the same also noted that the writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the Appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum.

5. *State of Himachal Pradesh v. Gujarat Ambuja Cement Ltd.* reported at AIR 2005 SC 3856, the Supreme Court explained the rule of 'alternate remedy' in the following terms

Considering the plea regarding alternative remedy as raised by the appellant-State. Except for a period when Article 226 was amended by the Constitution (42nd 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 of 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.

6. K.S. Rashid and Sons v. Income Tax Investigation Commission and Ors., AIR (1954) SC 207; Sangram Singh v. Election Tribunal, Kotah and Ors., AIR (1955) SC 425; Union of India v. T.R. Varma, AIR (1957) SC 882; State of U.P. and Ors. v. Mohammad Nooh, AIR (1958) SC 86 and M/s K.S. Venkataraman and Co. (P) Ltd. v. State of Madras, AIR (1966) SC 1089,

Constitution Benches of the Supreme Court held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

7. First Income-Tax Officer, Salem v. M/s. Short Brothers (P) Ltd., [1966] 3 SCR 84 and State of U.P. and Ors. v. M/s. Indian Hume Pipe Co. Ltd., [1977] 2 SCC 724.

There are two well recognized exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition.

13. For what purpose, these appeal provisions are made in "the TNVAT Act". The very purpose of the appeal provision is to ensure that the orders passed by the original authorities are

checked and the aggrieved person must get a remedy even before the Appellate forum. In all circumstances, if such appeal provision is dispensed with, then it will amount to circumventing the provisions of "the TNVAT Act" and further, this Court is of an opinion that the appeals provided under such statute are to be trusted even by the aggrieved persons. Thus, the writ petition is not only belated, since filed after a lapse of two years from the date of passing of the impugned order, but the appeal provision provided under the statute has not been exhausted by the writ petitioner. Under these circumstances, the present writ petitions cannot be entertained in view of the fact that the petitioner has to exhaust the appeal remedy contemplated under the provisions of "the TNVAT Act"

14. Accordingly, the writ petition stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

15. Registry is directed to return the original impugned orders filed along with the writ petitions to the learned counsel for the petitioner.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

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To

The Commercial Tax Officer,
Adyar Assessment Circle,
46, Greenways Road,
Chennai - 28.

+1 CC to Mr.R. Kumar, Advocate sr 44762.
+1 CC to Govt. Pleader sr 45394.

W.P.Nos.17066 to 17069 of 2018

VBA (CO)
SP (24/07/2018)