

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2018

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.17172 to 17175 of 2018

and

W.M.P.Nos.20435 to 20438 of 2018

Tvl.Devi Constructions,
Represented by its Proprietor,
P.Jayabal
No.61, Yercaud Main Road,
Hasthampatti,
Salem - 636 007.

...Petitioner in all W.Ps

Vs.

The Assistant Commissioner (ST),
Salem Town (North) Circle,
Salem.
W.Ps

...Respondent in all

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the files of the respondent in TIN:33462663216/2011-12, TIN:33462663216/2012-13, TIN:33462663216/2013-14, TIN:33462663216/2014-15 dated 27.03.2018 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan (in all W.Ps)

For Respondent : Mrs.G.Dhanamadhri,
Government Advocate (Taxes)
(in all W.Ps)

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C O M M O N O R D E R

The order of revision of assessment for the assessment years 2011-12, 2012-13, 2013-14 & 2014-15 issued in proceedings dated 27.03.2018 are under challenge in these writ petitions.

2.The learned counsel appearing on behalf of the writ petitioner strenuously contended that the application submitted by the writ petitioner seeking certain relevant documents have not been considered at all. This apart, the order impugned shows that there is no proper application of mind on the part of the authorities. In other words, the impugned order is non-speaking and the authorities, who passed the orders had not applied his mind in respect of the objections raised by the writ petitioner.

3.The grievances of the writ petitioner is that the objections submitted by the writ petitioner has been extracted in the impugned order and the same has been rejected without assigning any independent reasons. Thus, the orders are liable to be scrapped.

4.The learned counsel appearing for the writ petitioner further states that the writ petitioner has sought for certain documents for submitting his further representations/explanations. The documents sought for by the petitioner has not been furnished. Even without furnishing the required documents, the impugned order has been passed. Therefore, the action of the respondents are in violation of the principles of natural justice. Under these circumstances, the writ petitioner is constrained to move the present writ petitions.

5.The learned counsel appearing for the writ petitioner further states that in the earlier writ petition, this Court has issued certain guidelines to be followed by the Regional authority. However, the said guidelines are now the subject matter of a review petition pending before this Court.

6.The learned counsel appearing on behalf of the respondent opposed the contention by stating that certain guidelines are given in respect of certain circumstances, which may not have any relevance in respect of the facts and circumstances of the present case is concerned. Further, the guidelines issued earlier are not implemented in view of the fact that now, the GST has been came into force and at the time of issuing certain guidelines in the earlier writ petition, the GST was not in force. Thus, after the implementation of the GST, the guidelines issued prior to the implementation of GST is unable to be followed by the department. Thus, the department has also filed a review petition, which is pending before this Court.

7.May that it be. This court is of an opinion that against the revision order passed under Section 27 of the Tamil Nadu Value Added Tax, 2006(hereinafter referred to as "the TNVAT Act"), there is an appeal under Section 51 of the said Act. The

writ petitioner has to exhaust the appeal remedy provided under the provisions of "the TNVAT Act". The Appellate Authority under the provisions of "the TNVAT Act" is exercising quasi judicial powers and therefore, they are competent to adjudicate all the legal grounds raised by the writ petitioner in these writ petitions. The writ petitioner is at liberty to prefer an appeal, setting out all the grounds raised in these writ petitions, including the violation of Principles of Natural Justice and non-furnishing of the documents, which were sought for by the writ petitioner. The quasi judicial authorities are empowered to consider all these legal grounds and adjudicate the issues on merits and pass appropriate orders by considering the grounds raised by the writ petitioner. Under these circumstances, the constitutional Courts cannot dispense with the provision of appeal in a routine manner.

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

1. In *City and Industrial Development Corporation v. Dosa Aardeshir Bhiwandiwalla 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. Chhabildass 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) : MANU/SC/0054/2018

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.

9. 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 waiving the remedy of appeal provided under the statute.

10. Under these circumstances, the writ petitioner is at liberty to submit an appeal before the Appellate Authority under the provisions of "the TNVAT Act" and in the event of submitting an appeal, the Appellate Authority has to adjudicate the same on merits and in accordance with law.

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

12. Registry is directed to return the original impugned order to the learned counsel appeared for the writ petitioner.

Sd/-
Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

drl
To

The Assistant Commissioner (ST),
Salem Town (North) Circle,
Salem.

+1cc to the Special Government Pleader sr.45395
+4cc to Mr. R.Senniappan, Advocate Sr.45270, 45271, 45272, 45269

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vsn ii[co]
srg 25/07/2017

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