IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 09.11.2018

CORAM:
THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU
W.P.No.29484 of 2018
and
W.M.P.No.34450 of 2018

M/s.JVC Graphics & Signages Pvt., Ltd.,
No.22C, Balvadi Street, Nerkundram,
Chennai – 600 107,
By its Director J.Ravikumar. ..Petitioner

Vs

The Additional Commissioner,
Office of the Commissioner of GST & Central Excise,
Chennai South Commissionerate,
Nandanam, Chennai – 600 035. ..Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to Order in Original No.21 & 22/2018 – ADC dated 02.04.2018 passed by the respondent herein and to quash the same, insofar as the said impugned order has been passed in total violation to the principles of natural justice, without jurisdiction and in excess of the authority conferred on the said respondent.

For Petitioner : Mr.N.Viswanathan

For Respondent : Mr.A.P.Srinivas
Standing Counsel

O R D E R

Mr.A.P.Srinivas, learned standing counsel takes notice for the respondent. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. This writ petition is filed against the order in original Nos.21 and 22 of 2018 dated 02.04.2018 passed by the respondent.

3. Heard the learned counsel for the petitioner and the learned standing counsel for the respondent.

4. There is no dispute to the fact that as against the order impugned in this writ petition, a statutory appellate remedy lies before the first Appellate Authority viz., The Commissioner (Appeals).

5. However, the learned counsel for the petitioner vehemently contended that this writ petition is still maintainable before this Court even though such alternative remedy is available under the Statute, since the petitioner questions the very jurisdiction of the respondent in issuing the impugned proceedings. In support of such contention, the learned counsel for the petitioner submitted that the petitioner is not doing any manufacturing activities and on the other hand, the job workers, who fabricated the sign boards in different places outside the jurisdiction of the respondent alone are engaged in fabricating the sign boards and thus, the petitioner simply engaged in printing the sheets, cannot be termed as manufacturer and consequently, the respondent has no jurisdiction to levy the duty on the petitioner.

6. Though the learned counsel for the petitioner in support of such contention sought to rely on a Circular No.56/56/94 issued by the Board dated 14.09.1994, I am not convinced on the question of jurisdiction as raised by the petitioner to entertain the present writ petition.

7. First of all, there is no dispute to the fact that the petitioner is under the territorial jurisdiction of the respondent. Secondly, the perusal of the impugned order would show that the Adjudicating Authority has given a finding at Paragraph Nos.16.3 as well as 15.4 to bring the activities carried out by the petitioner as one of the 'manufacture'. Whether such finding rendered by the Adjudicating Authority based on appreciation of the factual aspects of the matter is correct or not, is for the next fact finding authority to consider and decide viz., the First Appellate Authority and not necessarily for this Court to do the same while exercising the discretionary jurisdiction under Article 226 of the Constitution of India. Certainly, the question whether the activities carried out by the petitioner would only fall within the definition of the manufacture or not, cannot be termed as jurisdictional issue and on the other hand, it is the factual aspect of the matter, which has to be considered and decided by the next fact finding authority. In the absence of any jurisdictional error, I do not think that the petitioner is entitled to maintain the present writ petition, when admittedly, the impugned order was passed after issuing the show cause notice to the petitioner and hearing them. Therefore, it is evident that the Adjudicating Authority has passed the impugned order of assessment by following the principles of natural justice as well. Whether the contentions raised by the

petitioner against the notice of proposal has been considered and decided in a proper and perspective manner, is again the issue touching upon the factual aspects of the matter, which can be raised and agitated before the Appellate Authority. When such statutory remedy is available to the petitioner, this Court is not inclined to entertain the present writ petition, more particularly, when the jurisdiction vested under Article 226 of the Constitution of India is discretionary one.

8. Accordingly, without expressing any view on the merits and contentions raised by the petitioner as well as the Adjudicating Authority in the impugned order, this Writ Petition is disposed of, only by granting liberty to the petitioner to file a statutory appeal before the next fact finding authority viz., The Commissioner (Appeals), within a period of four weeks from the date of receipt of a copy of this order. If any such appeal is filed by complying with the other statutory requirements within the time stipulated supra, the Appellate Authority shall consider the same and pass orders on its own merits and in accordance with law without reference to the period of limitation. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Additional Commissioner,
Office of the Commissioner of GST & Central Excise,
Chennai South Commissionerate,
Nandanam, Chennai - 600 035.

+1cc to Mr.N.Viswanathan, Advocate, S.R.No.76947
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.76827

W.P.No.29484 of 2018
and
W.M.P.No.34450 of 2018

EV(CO)

rrs 30/11/2018