IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 22.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.12907 OF 2011
AND
M.P.NO.2 OF 2011

M/s.E.R.K.Jewel Mart,
Rep. by its Proprietor-K.Paramasivam ...Petitioner

Vs

The Commercial Tax Officer,
Office of the Assistant Commissioner (CT)
Perundhurai,
Erode District. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified calling for the impugned proceedings of the Respondent in TIN:33712921632/2009-10 dated 25.04.2011, quash the same as illegal and contrary to the provisions of the TNVAT Act, 2006 insofar as assessment year 2009-10 is concerned.

For Petitioner : Mr.S.Rajasekar
For Respondent : Mrs.Dhanamadhri,
Government Advocate

O R D E R

Challenging the impugned assessment proceedings in TIN:33712921632/2009-10 dated 25.04.2011, the present writ petition has been filed.

2. This Court in various decisions had taken a view following the dictum laid down by the Hon'ble Supreme Court that when an alternate remedy of appeal is available, the High Court would not be justified in interfering with the assessment order, unless under very limited grounds. In the decision reported in (2010) 8 SCC 110 in the case of United Bank of India vs. Satyawati Tondon and others, it was observed that though it is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but there can be no reason why the High Court should entertain a petition filed

under Article 226 of the Constitution of India and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by way of an appeal and that the particular legislation contains a detailed mechanism for redressal of his grievance.

3. In view of the fact that the grounds raised by the petitioner herein would not fall under any of the exemption which could bye-pass the appeal remedy, this Court is not inclined to interfere with the impugned Assessment order. Nevertheless, this court is of the view that if an opportunity could be given to the petitioner to file an appeal against the proceedings in TIN:33712921632/2009-10 dated 25.04.2011, the ends of justice would be secured.

4. In the light of the above observations, the petitioner is granted liberty to file an appeal against the proceedings in TIN:33712921632/2009-10 dated 25.04.2011 within a period of thirty days from the date of receipt of a copy of this order before the respondent. On receipt of such appeal, if any, the respondent shall dispose of the same in accordance with law, after giving due opportunity of personal hearing to the petitioner, as expeditiously as possible.

5. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer,
Office of the Assistant Commissioner (CT)
Perundhurai, Erode District.

+1cc to Mr.R.Hemalatha, Advocate, S.R.No.62572
+1cc to the Special Government Pleader, S.R.No.63004

W.P.No.12907 of 2011
and
M.P.No.2 of 2011

SPD(CO)
CS/12/09/2019