IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2019

CORAM :

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos. 14018 and 14019 of 2013
and M.P. Nos.2 & 2 of 2013

Tvl. Swadeshi Plywoods & Glass House,
Represented by its Partner,
Shanthilal Mehta ... Petitioner
(In Both Writ Petitions)

vs.

The Assistant Commission (CT),
Mettupalayam Road, (C)
Coimbatore. ... Respondent
(In Both Writ Petitions)

Prayer : Writ Petitions are filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorari, calling for the records on the files of the respondent in TIN No.33612001836/2010-11 , 33612001836/2011-2012 dated 05.04.2013 and quash the same.

For Petitioner : Mr. R. Senniappan
For Respondent : Mr. Akhil Akbarali
(Govt. Advocate)
(In Both Writ Petitions)

C O M M O N O R D E R

Since Both writ petitions are directed against the order in TIN No.33612001836/2010-11 dated 05.04.2013 passed by the respondent herein, these writ petitions are disposed of by this Common order.

2. The petitioner in both petitions is one and the same. The petitioner is a dealer in plywood and glass house. The assessment under the Sales Tax Act for the year 2010-11 was re-opened on the ground that declaration in form "C" submitted by the buyer of the goods from the petitioner are bogus. The order of the re-opening the assessment year 2010-11 is under challenge.

3. Heard the counsel for the parties.

4. The learned counsel for the petitioner would submit that the issue in the writ petition is if the "C" Forms submitted by the buyer are found to be bogus then can the seller be penalized?

5. It is the contention of the learned counsel for the petitioner that the respondent had accepted the monthly returns of the petitioner firm and had allowed concessional rate for the inter-state sales based on the "C" Forms submitted by the buyer. The assessment for the year 2010-2011 was being re-opened because the "C" Form produced by the buyer was found to be bogus. In support of his submission, the learned counsel for the petitioner relied on a decision of the Judgment of this Court in the case of " The State of Tamil Nadu, Vs. Tvl. Nagappa Paper Company, [Tax Case Revision No.41 of 2014] wherein it is held that the seller cannot be penalized for a false C Form produced by the buyer. Further, he placed reliance on another Judgment of a Division Bench of this Court dated 12.10.2017, in the case of "Sastha Enterprises Vs. Appellate Authority, Commissioner, (CT) reported in [2011] 37 VST 94 (Mad) wherein it is held as follows:

> 7. It is true that the exemption allowed to the petitioner in the original assessment order is based on E1 from obtained from the original seller and C form obtained from the actual purchaser of the goods. it is equally true that once the transaction of transit sales is over, the petitioner has no control over the purchaser and he has no occasion to verify the C form produced from the side of the purchaser. the petitioner has only submitted as it is given to him by the purchaser, the petitioner was granted concession in the original assessment order. However, the same concession is disallowed because of the act of fraud said to be committed by the purchaser in respect of which the petitioner has no control once the transaction is over. Unless and otherwise it is, based on concrete material, found out that the transaction is not true or the petitioner is party to the act of fraud said to be committed by the purchaser, the question of disallowing the exemption already given to the petitioner for the transaction actually effected between the parties, does not at all arise.

In view of the above, the learned counsel would submit that in case of a dispute regarding the genuineness or otherwise of the C Forms produced by the purchasing dealer, it is for the Revenue to take action against the purchasing dealer in accordance with law under the provisions of the Act and if concessional rate is granted on the basis of the "C" Form produced by the purchaser and subsequently if it is found that the same is not genuine, the selling dealer cannot be penalized.

6. The learned Government Advocate appearing for the respondent would submit that the Act provides for an appeal against the impugned order and the settled position of law is that the extraordinary jurisdiction of this Court under Article 226 should be sparingly exercised when there is an alternative efficacious remedy. This position of law cannot be disputed. Their Lordships in the Supreme Court have also deprecated the practice of High Court in entertaining writ petitions under Article 226 of the Constitution against assessment order/re-opening assessment. The petitioner has to approach the Sales Tax Tribunal for appropriate remedy.

7. Considering the above submission made by the learned Government Advocate and in view of the fact that the petitioner has an efficacious alternative remedy by way of an appeal to the prescribed authority, this Court is not willing to exercise its extraordinary jurisdiction under Article 226 of the Constitutional of India. The petitioner is entitled to get benefit under Section 14 of the Limitation Act. The petitioner is directed to file the appeal if so advised, before the Appellate Authority within a period of eight weeks from the date of receipt of copy of this Order and on receipt of the appeal, the Appellate Authority shall hear and dispose of the same on merits and in accordance with law within a period of 4 weeks thereafter without raising the issue of limitation.

8.With the above directions, writ petition is disposed of. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

lbm

Copy to:

The Assistant Commission (CT),
Mettupalayam Road, (C)
Coimbatore.

+1 CC to The Spl. Govt. Pleader (T)Sr 26004.
+1 CC to Mr.R.Senniappan, Advocate sr 25001.

W.P.Nos. 14018 and 14019 of 2013
and M.P. Nos.2 & 2 of 2013

SP(14/05/2019)