IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.10450 of 2010 and
M.P.Nos.2 and 3 of 2010

M/s United India Shoes Corporation
(P) Ltd.,
rep. By its Director Mr.K.Ameenur Rahaman,
No.29, College Road,
Chennai - 600 0006 ..Petitioner

Vs

1. The Assistant Commissioner (CT)
Nungambakkam Assessment Circle,
No.88, Mayor Ramanathan Salai,
Chetpet, Chennai - 600 006

2. The State of Tamilnadu
rep. By its Secretary to Government,
Commercial Taxes and Registration Department,
Fort St. George,
Chennai - 600 009 ...Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 1st Respondent in TNGST/0461130/2005-06 quash the impugned proceedings dated 15.04.2010 in view of the exemption granted by the second respondent in view of G.O.Ms.No.528 CT & RE dated 21.11.1997 - Notification No.II(1)/ CT&RE/100/97 Gazette dated 17.12.1997 and further direct the first respondent to grant a reasonable opportunity including a personal hearing and thereafter pass orders in accordance with law.

For Petitioner : Mr.V.Sundareswaran

For Respondents : Mr.Mohamed Shaffiq
Special Government Pleader

ORDER

The prayer in the present petition is to call for the records of the 1st Respondent in TNGST/0461130/2005-06, quash the impugned proceedings dated 15.04.2010, in view of the exemption granted by the second respondent in G.O.Ms.No.528 CT & RE dated 21.11.1997 - Notification No.II(1)/CT&RE/100/97 Gazette dated 17.12.1997, further to direct the 1st respondent to grant a reasonable opportunity including a personal hearing and thereafter, to pass orders in accordance with law.

2. When a notice dated 22.01.2010 was issued to the petitioner herein stating that there was a liability under Section 3(4) of the TNGST Act and that the respondents intend to assess the turn over stated therein along with penalty, ten days period was granted to the petitioner to give their objections, if any. Thereafter, the petitioner sought for further time and through a notice dated 01.03.2010, a final opportunity to file their objection was given by extending a further period of 10 days by the 1st respondent. Pursuant to the extention of time granted, the petitioner, again, sought for a further time of one month through letter / representation dated 15.03.2010 for the purpose of submitting certain records and documents. The said letter dated 15.03.2010 is claimed to have been received by the 1st respondent on 17.03.2010. The 1st respondent herein, had then passed an order on 15.04.2010 revising the assessment, which is under challenge in the present Writ Petition.

3. According to the learned counsel for the petitioner, there was a duty cast upon the respondents to wait for a period of one month, which is the time sought for by the petitioner for submitting his objections / records and the impugned order having been passed even before the expiry of one month period sought for by them, is in violation of the circular guidelines issued by the Commissioner of Commercial Tax. The learned counsel submitted that since the impugned order came to be passed without granting the time sought for by the petitioner, the same would amount to violation of 'principles of natural justice'. Apart from that, the learned counsel made certain submissions touching upon the merits of the case, which he intended to raise before the assessing officer/ 1st respondent herein.

4. Heard the learned Special Government Pleader for the respondents 1 and 2 and perused the documents placed on record.

5. Insofar as the 1st ground raised by the petitioner, viz., that the impugned order being passed without rejecting the petitioner's request or granting time for submitting his

objections is in violation of 'principles of natural justice' is concerned, this Court is not in agreement with the submission. Firstly, the Circular relied upon by the learned counsel for the petitioner will not have a statutory force, which will bind the 1st respondent herein. Even otherwise, the additional time, which was sought by the petitioner herein is not backed by any provision of Law by which the respondents are bound to consider.

6. A mere instruction in the guidelines cannot nullify an order passed under the provisions of the Act. Moreover, when the petitioner had earlier sought for extention of time, pursuant to the original notice dated 22.01.2010, the 1st respondent had acceded to such a request and granted a further period of 10 days. It is thereafter, that the petitioner has sought for further extention. Since the Circular does not have any binding effect, which would nullify the statutory order passed, I am of the view that the non-consideration to petitioner's request for further time will not amount to the violation of the 'principles of natural justice'.

7. Insofar as the other ground raised by the petitioner is concerned, it is well settled proposition of Law that the Article 226 Constitution of India, cannot be invoked, in case where an alternate remedy of Appeal/Revision is available excepting to limited grounds, questioning the jurisdiction or order being perverse etc., None of the grounds raised by the petitioner would amount to questioning the jurisdiction or challenging the order on the ground of perversity. While that being so, the Writ Petition itself is liable to be rejected on the ground of available of alternate remedy, which the petitioner had not invoked.

8. Further, it is a well settled proposition that a writ petition under Article 226 of the Constitution of India cannot be entertained, if alternate statutory remedies are available, except in cases falling within the well-defined exceptions are prescribed. Quoting such observations made by the Hon'ble Apex Court in a decision reported in (2014) 1 SCC 603, in the case of CIT vs Chhabil Dass Agarwal, the Hon'ble Apex Court in the case of Authorized Officer, State Bank of Travancore and another vs Mathew K.C. reported in (2018) 3 SCC 85, had observed that the writ petition of this nature ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons or falling under such exceptions. It is further seen that in Satyawati Tondon's case reported in (2010) 8 SSC 110, the Hon'ble Supreme Court had observed that it is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies and exercise its

jurisdiction under Article 226 for passing orders, which have serious adverse impact on the dues to be recovered. While observing so, the Hon'ble Supreme Court had held that the High Courts should exercise their discretion in such matters with greater caution, care and circumspection.

In view of all the above foregoing reasons, I am of the view that no interference is required to the impugned order dated 15.04.2010 passed by the 1st respondent. Accordingly, the Writ Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

ssd

To

1. The Assistant Commissioner (CT)
Nungambakkam Assessment Circle,
No.88, Mayor Ramanathan Salai,
Chetpet, Chennai - 600 006

2. The Secretary to Government,
The State of Tamilnadu
Commercial Taxes and Registration Department,
Fort St. George,
Cehnani - 600 009

+1cc to Mr.V.Sundareswaran, Advocate SR.No.57120

+1cc to Special Government Pleader (Taxes) SR.No.56620

W.P.No.10450 of 2010 and
M.P.Nos.2 and 3 of 2010

BR(CO)
GMY(16/08/2019)