IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.Nos.1429 to 1432 of 2010
and
M.P.Nos.2 to 2 of 2010

Tvl. Coimbatore Aero Based Control
Systems Private Limited,
Rep. by its Managing Director
Andrews Vinumohan,
31/1, Devi Apartments,
Krishnasamy Road,
Coimbatore - 641001. ...Petitioner in all WPs

Vs

The Assistant Commissioner (CT),
R.S.Puram (East) Assessment Circle,
Coimbatore - 18. ...Respondent in all WPs

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the impugned proceedings of the respondent in TNGST 1940711 of 2004-05, 2003-2004, 2005-2006 and 2002-2003, respectively dated 24.11.2009, quash the same as illegal and against the provisions of the Act.

For Petitioner : Mr.S.Rajasekar
(in all WPs)

For Respondent : Mrs.Dhanamadri, GA
(in all WPs)

COMMON ORDER

Though the petitioner herein has raised various grounds challenging the assessment orders for the assessment years 2002-2003, 2003-2004, 2004-2005, 2005-2006, none of these grounds are to the effect that the authorities do not have jurisdiction or that the assessment orders are perverse, which may enable the petitioner to invoke the provisions of Article 226 of the Constitution of India, by overlooking the appeal remedy available under Section 31 of the TNGST Act.

2. 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.

3. The learned counsel for the petitioner attempted to impress this Court on such grounds, which could be raised before the Appellate Authority. I do not wish to render my findings on such grounds, since this Court is of the view that the petitioner can be granted liberty to file an appeal before the Appellate Authority on certain terms.

4. The assessment orders came to be passed on 24.11.2009 and the writ petitions were thereafter filed on 25.01.2010, which was within the permissible limitation period prescribed under Section 31, if the petitioner had chosen to file an appeal. There is also a pre-condition to deposit 25% of the disputed tax. However, since the petitioner is now being given liberty to file an appeal, the interest of the department also requires to be protected. In these circumstances, if the petitioner is directed to deposit 50% of the disputed tax, the ends of justice would be secured.

5. In the light of the above observations, the petitioner is granted liberty to file an appeal against the assessment orders for the years 2002-2003, 2003-2004, 2004-2005, 2005-2006, within a period of 30 days from the date of receipt of copy of this order, on condition that the petitioner deposits 50% of the

disputed tax and on receipt of such an appeal, the concerned Appellate Authority shall dispose of the same on its own merits and in accordance with law, after giving due opportunity to the petitioner herein, as expeditiously as possible.

6. With the above observations, the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

hvk
To

The Assistant Commissioner (CT),
R.S.Puram (East) Assessment Circle,
Coimbatore - 18.

+1cc to the Special Government Pleader Sr.56134
+1cc to M/s.R.Hemalatha, Advocate Sr.56070

W.P.Nos.1429 to 1432 of 2010
and
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skv[co]
srg 16/08/2019