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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.Nos.2699 & 2700 of 2010
and
M.P.Nos.2 & 2 of 2010

Tvl.AKS Alloys,
165, Road Street,
Krishnapuram Post,
Kizhambi Village,
Kancheepuram. ...Petitioner in all WPs

Vs

The Commercial Tax Officer,
Kancheepuram North Assessment Circle,
Kancheepuram. ...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 respondent in TNGST 1641833 of 2004-2005, 2005-2006, dated 15.10.2008 and quash the same as illegal and unconstitutional.

For Petitioner : Mr.A.Ravichandran
(in all WPs)

For Respondent : Mr.Mohamed Shaffiq, Spl. GP
(in all WPs)

COMMON ORDER

As against the revised impugned orders, an appeal lies under Section 31 of the TNGST Act, which requires to be preferred within a period of 30 days from the date of service of the order. In the present case, the impugned orders are passed on 15.10.2008, and the writ petitions came to be filed on 09.02.2010, after almost fourteen months. It is no doubt true that even when the alternate remedy of an appeal is available under the statute, the writ petition could be maintained on very limited grounds of lack of jurisdiction or the order being perverse or otherwise illegal. In the instant case, the grounds raised by the petitioner challenging the impugned orders are not such grounds which can circumvent the alternate remedy of an appeal. As such, the writ petitions itself may not be maintainable. It would be relevant to mention here that the appeal remedy, apart from the limitation, also provides for a deposit to be made as pre-condition for filing an appeal, which has also been circumvented in the instant case by filing the writ petitions directly.

2. In this context, the learned counsel for the petitioner submitted that the revised orders were not served on them and that they were aware of the revised orders only when the subsequent notice from the Assessing Officer was received by them on 05.10.2009. I am unable to agree with such a contention, in view of the statement made by the petitioner in his affidavit stating that the revised orders were served on one of the employees of the petitioner firm, who had abandoned the post.

3. Rule 52(1) of the TNGST Rules, 1959 reads as hereunder:-

> Rule 51(1). Service of notices - The service of a dealer on any notice, summons or order under the Act or these rules may be effected in any of the following ways, namely:-
>
> Rule 52(1)(a) - by giving or tendering it to such dealer or his manager or agent or the legal practitioner appointed to represent him or to his authorised representative, or
>
> Explanation - Endorsement by person who delivers the notice, etc., of having tendered or given it will be proof for the purpose of this sub-rule.
>
> Rule 52(1)(b) - if such dealer or his manager or agent or the legal practitioner appointed to represent him, or his authorised representative is not found, by giving or tendering it to any adult member of his family;
>
> Rule 52(1)(c) - if the address of such dealer is known to the assessing authority, by sending it to him by registered post; or
>
> Rule 52(1)(d) - if none of the models aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence.

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4. A perusal of the Rule reveals that a notice on the dealer or his manager or agent or a legal practitioner appointed to represent his dealer or an authorised representative of the dealer would amount to a proper service of notice. When the petitioner is a firm and it is not in dispute that one of the employees of the firm had received the notice on behalf of the firm, it has to be construed that such employee had acted as an agent of the firm for the purpose of receiving the notice. The Rule does not prescribe that such an agent of the firm should be authorised by the dealer for the purpose of receiving the notice. By reading the Rule in the aforesaid context, receipt of a notice by one of the employees of the firm, on behalf of the firm, will definitely amount to a proper service and thereby, the provisions of Rule 52(1) is deemed to have been complied with. In view of the same, the submissions of the learned counsel for the petitioner, cannot be sustained.

5. 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.

6. As the petitioner had failed to avail the remedy of appeal as provided under Section 31 of the TNGST Act within the prescribed time limit and in view of the fact that the grounds raised in the present writ petitions challenging the impugned revised orders are not the grounds which are available to invoke Article 226 of the Constitution of India, surpassing the appeal remedy, the writ petitions are liable to be rejected.

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7. For all the foregoing reasons, this Court is not inclined to interfere with the impugned orders. Accordingly, the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

hvk

To

The Commercial Tax Officer,
Kancheepuram North Assessment Circle,
Kancheepuram.

+1 cc to the Special Government Pleader(Taxes), S.R.No.56624

W.P.Nos.2699 & 2700 of 2010
and
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AD(CO)
SSM(14/08/2019)

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