IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2019

CORAM

THE HON'BLE MR. JUSTICE M. SUNDAR

W.P.Nos.6370 & 6371 of 2019
and
W.M.P.Nos.7198 & 7200 of 2019

M/s.Sonal Steel Trading Company Pvt. Ltd,
rep.by its Director,
No.8/28, Amman Koil Street,
Moore Market,
Chennai 600 003. ... Petitioner in both W.Ps

Vs.

Assistant Commissioner (CT)
Moore Market Assessment Circle
Chennai 600 001.
... Respondent in both W.Ps

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondent and to quash the assessment proceedings in TIN Nos.33240361333/2014-15 and TIN No.33240361333/2015-16 dated 22.11.2018 as illegal and direct the respondent to pass fresh orders after providing an opportunity of personal hearing to the petitioner.

For Petitioner in both W.Ps : Mr.C.Baktha Siromoni

For Respondent in both W.Ps. : Ms.G.Dhanamadhri
Government Advocate

C O M M O N O R D E R

Mr.C.Bhaktha Siromoni, counsel on record for writ petitioner in both writ petitions and Ms.G.Dhanamadhri, Government Advocate on behalf of lone official respondent in both the writ petitions are before this Court.

2. With consent of learned counsel on both sides, main writ petitions itself are taken up for disposal, heard out and are being disposed of.

3. This Court is informed by both sides that the parties in both these writ petitions are same and the central theme / core issue in both these writ petitions is the same. It is also brought to the notice of this Court that the difference between the two writ petitions is the assessment years and obviously numerical values. While first of the two writ petitions i.e., W.P.No.6370 of 2019 pertains to assessment year 2014-2015, the second writ petition namely W.P.No.6370 of 2018 pertains to assessment year 2015-2016.

4. Subject matter of the instant writ petitions arises under 'Tamil Nadu Value Added Tax Act, 2006 (TN Act 32/2006) ' (which shall be hereinafter referred to as 'TNVAT Act' for brevity), as well as the rules thereunder i.e., 'Tamil Nadu Value Added Tax Rules, 2007 '(which shall hereinafter be referred to as 'TNVAT Rules'). To be noted, TNVAT Rules is a set of rules which is subordinate legislation made by the Government under rule making power vested in it by Section 81 of TNVAT Act.

5. Writ petitioner is a registered dealer under TNVAT Act on the file of respondent. Writ petitioner is in the business of dealing in stainless steel, ferrous and non-ferrous metals and business activity of the writ petitioner includes purchase and sales, both local and interstate.

6. Writ petitioner was filing monthly returns under TNVAT Act and Rules. These monthly returns are inter alia under Section 21 of TNVAT Act and there was deemed assessment under Section 22(2) of TNVAT Act. The business premises of the writ petitioner was inspected by the Enforcement Wing officials of the respondent Department on 13.07.2017. Based on such inspection, revisional notice was issued by respondent to the writ petitioner inter alia proposing to disallow certain purchases. The issues in this regard turn on two main aspects. One is purchase from sellers, whose registrations have been cancelled. The other issue is mismatch.

7. Writ petitioner responded to the revisional notice and revised assessment orders were made by the respondent being assessment orders (both) dated 20.11.2018 bearing nos. TIN/33240361333/2014-15, TIN/33240361333/2015-16. These two assessment orders have been called in question in these two writ petitions, which are now being disposed of. These two revised assessment orders which have been made inter alia under Section 27 of the TNVAT Act shall hereinafter be collectively referred to as 'impugned orders' in plural and 'impugned order' in singular.

8. Primordial contention of learned counsel for writ petitioner is, with regard to the two aforesaid issues namely

purchase from Registration Certificate cancelled dealers and mismatch, judgment of Ho'nble Supreme Court of India in State of Maharashtra Vs. Suresh Trading company reported in 1998 109 STC 439 (SC) and judgment of this Court in M/s.JKM Graphics Solutions Private Limited [M/s.JKM Graphics Solutions Private Limited Vs. The Commercial Tax Officer, Vepery Assessment Circle, Chennai-6] reported in 99 VST 343 have not been adhered to. To be noted, with regard to registration cancelled dealer issue, Suresh Trading company principle and with regard to mismatch, M/s.JKM Graphics Solutions Private Limited principle have been relied on.

9. Responding to the aforesaid submission of learned counsel for writ petitioner, learned Government Advocate submitted that the respondent has adhered to the aforesaid principles while dealing with registration cancelled dealers issue as well as mismatch issue. To buttress her submission, learned Government Advocate drew the attention of this Court to a portion of paragraph no.3 of the impugned order qua 2014-2015 assessment year, which is the subject matter of W.P.No.6370/2019 and paragraph no.4 of the impugned order qua next assessment year 2015-2016, which is the subject matter of W.P.No.6371/2019 and relevant portion of paragraph no.3 of the first impugned order and paragraph no.4 of the second impugned order reads as follows:

> 3. Further, they have not produced the profit and loss account and balance sheet at the time of inspection. They were requested to produce the same for necessary verification.
>
> It was also proposed to levy penalty/interest under Section 27 of the Act at the appropriate rate, if applicable.
>
> Accordingly a notice was issued on 24.04.2017 mentioning the above defects. Further an opportunity of personal hearing was afford to them. They have filed their objection in their letter dated 11.05.2017. Further notices were issued to the dealer on 08.12.2017 and 30.10.2018. But they have not filed any objection till date.
>
> In their reply dated 11.05.2017, they have stated that the purchase were made from the registered dealers, by way of paying tax properly. As and when they made the purchases, they ensured that the registration of the dealer has been in force. Further in support of their contention, they have filed the copies of tax invoice, issued by their sellers and bank statement. Further they have cited case laws pronounced by the Hon'ble High Court of Madras in their support.

4. Further, the dealer was requested to produce the profit and loss account and balance sheet for verification which was not produced at the time of inspection.

It is also proposed to levy penalty/interest under Section 27 of the Act at the appropriate rate, if applicable.

Accordingly a notice was issued on 24.04.2017 mentioning the above defects. Further an opportunity of personal hearing was afford to them. They have filed their objection in their letter dated 11.05.2017. Further notices were issued to the dealer on 08.12.2017 and 30.10.2018. But they have not filed any objection till date.

In their reply dated 11.05.2017, they have stated that the purchase were made from the registered dealers, by way of paying tax properly. As and when they made the purchases, they ensured that the registration of the dealer has been in force. Further in support of their contention, they have filed the copies of tax invoice, issued by their sellers and bank statement. Further they have cited case laws pronounced by the Hon'ble High Court of Madras in their support.

10. Responding to the above, by way of reply, learned counsel for writ petitioner made several submissions on merits which are to the effect that there are several errors in the exercise that has been carried out by the respondent in passing the impugned orders. What according to writ petitioner are errors in the impugned orders were highlighted by making submissions on merits qua impugned orders. This Court refrains from expressing any opinion on merits of what according to the writ petitioner counsel are errors and on the submissions made on merits qua the impugned order, in view of the order which this Court now proposes to pass in the instant case. There is no disputation or disagreement before this Court that statutory appeal remedy is available to the writ petitioner against the impugned orders under Section 51 of TNVAT Act and the appeal lies to the jurisdictional appellate Deputy Commissioner. This takes us to the issue of exercise of writ jurisdiction notwithstanding alternate remedy.

11. There is a long line of authorities of Hon'ble Supreme Court on this aspect of the matter i.e, exercise of writ jurisdiction notwithstanding alternate remedy. To put these principles in a nutshell, it can be said that rule of alternate remedy is not an absolute rule. In other words, it is not a rule of compulsion, but it is a rule of discretion. Though it is a rule of discretion, Hon'ble Supreme Court in Satyawati Tondon

case (United Bank of India v. Satyawati Tondon and others reported in (2010) 8 SCC 110), has held that, with regard to matters pertaining to taxes, cess etc., i.e., fiscal law in general, the rule of alternate remedy should be applied very strictly or in other words the rule should be applied with utmost rigour. This principle was re-iterated by the Hon'ble Supreme Court in K.C.Mathew case reported in (Authorized Officer, State Bank of India v. K.C.Mathew reported in (2018) 3 SCC 85).

12. Be that as it may, with regard to alternate remedy, certain specific exceptions have been adumbrated and the exercise of writ jurisdiction will be only when the writ petitioner is able to show that the matter falls within these exceptions. Exceptions broadly stated are as follows :

(a) lack of jurisdiction on the part of the authority passing impugned order

(b) violation of principles of natural justice

(c) alternate remedy being illusive i.e., ineffective or not efficacious

13. The aforesaid adumbration of exceptions is not exhaustive but is only for the limited purpose of articulating the position that this Court deems it appropriate to relegate the writ petition to the appeal remedy.

14. Learned counsel for petitioner submitted that disregarding orders of higher Courts is also an exception to the rule of alternate remedy. To be noted, in the instant case, in the light of the narrative supra particularly relevant portion of paragraph no.3 in the first impugned order and entire paragraph no.4 of the second impugned order which have been extracted and reproduced supra, in the considered opinion of this Court, it cannot be gainsaid that the Suresh Trading company principle with regard to purchase from registration cancelled dealers and M/s.JKM Graphics Solutions Private Limited principle with regard to mismatch, have been given a go-by as respondent has embarked upon the exercise in accordance with the principles in Suresh Trading company and M/s.JKM Graphics Solutions Private Limited, based on the response of the writ petitioner i.e., response to revisional notice. However, as would be evident from the submissions of the learned counsel for writ petitioner as alluded to supra, the case of the writ petitioner is that the exercise is not satisfactory and there are errors in the exercise. Therefore, this Court is of the considered opinion that this is a fit case to relegate the writ petitioner to alternate remedy i.e., statutory appeal (under Section 51 of TNVAT Act) to the jurisdictional Appellate Deputy Commissioner.

15. If the writ petitioner chooses to avail alternate remedy, it is open to the writ petitioner to seek condonation of delay subject to the time periods prescribed under Section 51 of TNVAT Act. Besides seeking condonation of delay, it is also open to the writ petitioner to seek exclusion of time spent in the instant writ petition under Section 14 of the Limitation Act. If the writ petitioner chooses to adopt such a course, such prayers/pleas for condonation of delay and/or exclusion of time spent under Section 14 of Limitation Act shall be dealt with on its own merits by the Appellate Authority. Though obvious, it is made clear that the appeal will be entertained subject to such delay condonation application and time exclusion applications, if the writ petitioner is chooses to avail the same.

16. These writ petitions are disposed of relegating the writ petitioner to the statutory appeal remedy in the aforesaid manner. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Sk

To

Assistant Commissioner (CT)
Moore Market Assessment Circle
Chennai 600 001.

+1cc to the Special Government Pleader(Taxes), S.R.No. 54162

W.P.Nos.6370 & 6371 of 2019

GP(CO)
GN(19/08/2019)