IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 10.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.5705 of 2019
and
W.M.P.No.6497 of 2019

Tvl Keerthi Enterprises represented by
Its Proprietor K.Baranidharan. .. Petitioner

Vs.

Assistant Commissioner (ST) (FAC)
Chengalpattu Assessment Circle
No.16A,1st Floor, 1st Main Road
Anna Nagar, Chengalpattu 603 001. .. Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records of the respondent proceeding in TIN: 33601606518/2016-17 dated 04/01/2019 and quash the same as illegal.

For Petitioner : Mr.M.Desingu

For Respondent : Mr.M.Haribabu,
Additional Government Pleader.

ORDER

Mr.M.Desingu, learned counsel on record for writ petitioner is before this Court.

2. Mr.V.Haribabu, learned 'Additional Government Pleader' ('AGP' for brevity) is before this Court on behalf of the lone respondent.

3. Lone respondent has filed counter affidavit dated 13.05.2019 and pleadings are complete.

4. With consent of learned counsel on both sides, main writ petition itself is taken up, heard out and the same is being disposed of.

5. Instant writ petition arises under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)', which shall hereinafter be referred to as 'TNVAT Act' for the sake of convenience and brevity.

6. Writ petitioner is a dealer under TNVAT Act.

7. Writ petitioner was filing monthly returns, obviously under Section 21 of TNVAT Act and relevant Rules thereunder. On scrutiny of monthly returns, which were filed electronically by the dealer, according to respondent, it came to light that in respect of certain purchases said to have been effected by writ petitioner from other dealers, their registration had been cancelled prior to the date of purchase of such goods. It is the case of the respondent that writ petitioner has availed 'Input Tax Credit' ('ITC' for brevity), on such purchases, where the registration of selling dealers, from whom writ petitioner had purchased goods, have been cancelled even prior to the date of purchase. As ITC had been availed, the issue of ordering reversal of ITC arose.

8. Therefore, respondent issued a notice dated 31.05.2018 to writ petitioner/dealer, but admittedly writ petitioner dealer did not send any reply. Though writ petitioner did not file/send any reply, respondent sent one more communication dated 07.08.2018 fixing personal hearing on 27.10.2018. Though the writ petitioner dealer did not respond to the aforesaid notice dated 31.05.2018, this time writ petitioner availed the personal hearing on 27.10.2018 and documents in the nature of purchase bills and bank statement of accounts were filed, but without any narration regarding the same. However, the personal hearing proceeded.

9. Based on the documents i.e., some purchase bills and bank statement of accounts which were produced by writ petitioner dealer in the personal hearing on 27.10.2018, respondent passed a revised assessment order under Section 27 of TNVAT Act. This revised Assessment Order is dated 04.01.2019 bears Reference No. TIN: 33601606518/2016-17 and the same has been called in question in the instant writ petition. Therefore, this 'revised assessment order dated 04.01.2019, bearing Reference No. TIN: 33601606518/2016-17' shall hereinafter be referred to as 'impugned order' for the sake of brevity, clarity and convenience.

10. A perusal of the impugned assessment order reveals that respondent has ordered reversal of ITC to a specified extent. In the impugned order, respondent has given reasons for ordering such reversal. Respondent has mentioned in the impugned order that writ petitioner has purchased from three selling dealers

and availed ITC. It was also mentioned in the impugned order that registration of these selling dealers was cancelled by the registering authority concerned and the selling dealers had raised invoices thereafter, on the writ petitioner based on which ITC had been availed. The names of the three selling dealers, their respective 'Tax Identification Number' ('TIN' for breivty) and the dates on which, the respective registrations were cancelled have all been mentioned in the impugned order and it has been given in a tabular form, which reads as follows:

S.No.	Name of the dealer	Remarks
1.	Sri Periyandavar Exports	TIN:33081682852 Registration Cancellation:18.07.2016
2	Sri Saravana Mills	TIN:33776353750 Registration Cancellation:11.04.2017
3	V Sree Safety Products	TIN:33466445702 Registration Cancellation:28.11.2016

Thereafter, ITC reversal order has also been given in a tabular form, which reads as follows:

S.No	Particulars	Turnover	Tax/ITC
1	ITC reversal on purchase from cancelled dealers due	31,64,52,069/-	1,58,24,125/-
2	Paid		NIL
3	Balance		1,58,24,125/-

11. Learned counsel for writ petitioner submitted that respondent ought not to have ordered reversal of ITC under Section 19(15) of TNVAT Act as the said provision provides for payment of ITC availed only from the date on which the order of cancellation of registration of the selling dealer takes effect.

12. There is no difficultly about accepting this principle, but in the instant case, on facts, respondent has issued a notice and writ petitioner has not replied. Though writ petitioner has not replied, respondent has sent one more communication fixing a personal hearing which was availed, some documents in the nature of purchase bills and statement of accounts were filed in the personal hearing and after considering these documents and hearing writ petitioner in the personal hearing, respondent has returned a factual finding that

cancellation of registration of the selling dealers was prior to the dates on which invoices were raised by selling dealers on the writ petitioner. Therefore, respondent has returned a finding on facts. Pointing out that respondent has returned findings on facts, learned Revenue counsel submitted that factual disputes (if at all and if any) cannot be resolved in a writ petition and it can at best be canvassed only by way of a statutory appeal.

13. This is not a case where respondent has proceeded on the mere basis that registration certificates of selling dealers have been cancelled. This is a case where respondent has put the writ petitioner on notice, given a personal hearing, examined the documents which includes purchase invoices and bank statement of accounts and thereafter returned a categorical finding that cancellation of registration certificates of the selling dealer was prior to the dates of purchase by writ petitioner.

14. In the counter affidavit, particularly, in paragraphs 8 and 9, it has been averred that in the personal hearing, writ petitioner has not been able to explain several correlations with the bank statement invoices and the undisputed dates of cancellation of registration certificate of selling dealers. This is articulated in paragraphs 8 and 9 of the counter affidavit. However, on the principle that the impugned order should stand or fall on the averments contained in the impugned order and it cannot be subsequently bettered or expanded by way of a counter affidavit, this Court has confined itself to examining the impugned order as placed before this Court.

15. From the narrative thus far and from all that have been alluded to supra, it leaves this Court with the considered view that respondent has examined the documents in the personal hearing which were given by writ petitioner/dealer though writ petitioner had not responded to the notice and after examining the documents, respondent has returned factual findings, which has already been alluded to supra. Based on such factual findings, reversal of ITC has been ordered under Section 19(15) of TNVAT Act.

16. If there are any errors in the factual findings, it at best qualifies as a ground for appeal and it does not call for interference in writ jurisdiction.

17. This takes us to the alternate remedy aspect of the matter.

18. Alternate remedy rule is a self imposed restriction qua writ jurisdiction. Alternate remedy is not an absolute rule. It is not a rule of compulsion, but it is a rule of discretion. Though alternate remedy is a self imposed restriction qua writ jurisdiction and it is only a rule of discretion not being a rule of compulsion, Hon'ble Supreme Court in Satyawati Tandon Case [United Bank of India Vs. Satyawati Tondon and others reported in (2010) 8 SCC 110] has held that when it comes to matter pertaining to Taxes, CESS, Revenue etc., alternate remedy has to be applied with utmost rigour. Satyawati Tondon principle was subsequently reiterated by Hon'ble Supreme Court in K.C.Mathew case [Authorized Officer, State Bank of Travancore Vs. Mathew K.C. reported in (2018) 3 SCC 85]. Relevant paragraph is paragraph 10 and the same reads as follows:

> '10. In Satyawati Tondon the High Court had restrained further proceedings under Section 13 (4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding: (SCC pp.123 & 128, Paras 43 & 55)
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> "43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this Rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the

Constitution, a person must exhaust the remedies available under the relevant statute.

55.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 under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.'

(Underlining made by Court to supply emphasis and highlight)

19. In the light of the narrative thus far, this Court deems it appropriate to not to interfere in the impugned order in this writ petition leaving it to the writ petitioner to assail the impugned order by way of an appeal before the appellate authority. This Court is informed that the alternate remedy is by way of an appeal under Section 51 of TNVAT Act and that the Appellate Authority is the jurisdictional Appellate Deputy Commissioner.

20. If the writ petitioner chooses to avail aforementioned alternate remedy by filing an appeal before the appellate Authority, it is open to the writ petitioner to seek condonation of delay if any. Besides condonation of delay if any, it is also open to the writ petitioner to seek exclusion of time spent in the instant writ petition by relying on Section 14 of Limitation Act. If the writ petitioner avails alternate remedy and if it becomes necessary for writ petitioner to seek condonation of delay and/or exclusion of time spent in the instant writ petition by relying on Section 14 of Limitation Act, such prayers shall be decided by the Appellate Authority on their own merits.

21. If that scenario unfurls and if the appeal is heard out on merits though obvious it is made clear that the Appellate Authority shall hear out the appeal on its own merits uninfluenced by and untrammelled by any views that have been expressed by this Court in the instant order. Any view that has been expressed by this Court in the instant order is only for the limited purpose of disposal of instant writ petition.

22. Writ petition is dismissed preserving the rights of the writ petitioner to avail appeal remedy, if writ petitioner chooses to do so albeit with the aforesaid caveat regarding delay.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

Assistant Commissioner (ST) (FAC)
Chengalpattu Assessment Circle
No.16A,1st Floor, 1st Main Road
Anna Nagar, Chengalpattu 603 001.

+1cc to Mr.M.Desingu, Advocate Sr.57969
+1cc to the Special Government Pleader Sr.59385

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srg 14/08/2019