IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.Nos.8461, 8464, 8462, 9239, 9242, 9247 & 9248 of 2019
and
W.M.P.Nos.8990, 8992, 8995, 9774, 9780, 9789 & 9791 of 2019

W.P.No.8461 of 2019

Tvl.J.K.Fashions Private Ltd.,
Rep.by its Managing Director Ranjit Jacob,
No.A4, SIDCO Industrial Estate,
Villivakkam,
Chennai - 600 049. ..Petitioner in All the Petitions

vs

Assistant Commissioner(CT),
Villivakkam Assessment Circle,
No.15, 16, Malligai Avenue Extention,
Kolathur,
Chennai - 600 099. ..Respondent in All the Petitions

Prayer in WP.No.8461, 8464, 8462, 9239, 9242, 9247 & 9248 of 2019 :

These Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records in

i) TIN No.33980000765/2010-2011 dated 04.02.2019
ii) TIN No.33980000765/2011-2012 dated 11.02.2019
iii) TIN No.33980000765/2012-2013 dated 31.01.2019
iv) TIN No.33980000765/2013-2014 dated 19.02.2019
v) TIN No.33980000765/2014-2015 dated 04.03.2019
vi) TIN No.33980000765/2015-2016 dated 04.03.2019
vii)TIN No.33980000765/2010-2011 dated 30.01.2019 respectively,

on the file of the respondent and quash the same as illegal and pass such further or other orders directing the respondent to follow the directions given in the judgment reported in 99 VST 343 by this Hon'ble Court and thus render justice.

For Petitioner : Mr.A.Thiagarajan, Senior counsel
for Mr.M.Nalla Thambi
(in all W.Ps)

For Respondent : Mr.V.Haribabu
Additional Government Pleader
(in all W.Ps)

COMMON ORDER

This common order will govern these seven writ petitions.

2. Mr.A.Thiagarajan, learned Senior counsel appearing on behalf of the counsel on record for writ petitioner in all these seven writ petitions and Mr.V.Haribabu, learned Additional Government Pleader on behalf of the sole respondent in all seven writ petitions are before this Court.

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

4. Subject matter of instant writ petitions 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 brevity and convenience.

5. Writ petitioner is a dealer under TNVAT Act. Writ petitioner was filing monthly returns under Section 21 of TNVAT Act and there was deemed assessment interalia under Section 22 (2) of TNVAT Act. When things stood thus, the business premises of the writ petitioner was inspected by Enforcement Wing officials of the Tax Department on 02.08.2016. This was under Section 65 of TNVAT Act and during such inspection, Enforcement Wing officials noticed certain aspects, which according to them are discrepancies.

6. Before this Court proceeds further, it is necessary to mention that the writ petitioner is same in all these seven writ petitions. It is also submitted by both sides before this Court in the hearing that the central theme / core issue in all these seven writ petitions is the same. It is also submitted that these writ petitions arise out of a common factual matrix, only the Assessment Years being different. The Assessment Years, which form subject matter of the seven instant writ petitions are 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016 and 2016-2017. As the Assessment Years are different, obviously the numerical values are also different. To be noted, on this basis, the common order disposing of the seven writ petitions is being passed with consent of both sides.

7. Reverting to the central theme of writ petitions on hand, notwithstanding several averments made in the affidavits filed in support of instant writ petitions and several grounds /

contentions raised in the affidavits filed in support of instant writ petitions, learned Senior counsel for the writ petitioner, submitted that the entire matter turns on one pivotal issue and that lone issue was projected and argued.

8. As already alluded to supra, writ petitioner is a dealer under TNVAT Act, monthly returns being filed, there was deemed assessment, there was inspection by Enforcement Wing officials, Enforcement Wing officials noticed certain aspects which according to them are discrepancies, and proposal was made by Enforcement Wing officials. Pursuant to such proposals, the respondent in these seven writ petitions, who is the Assessing officer, issued revisional notices to the writ petitioner, calling upon the writ petitioner to send objections, and reply, if any.

9. Writ petitioner sent several objections.

10. Thereafter, the respondent, in his capacity as Assessing officer, embarked upon the exercise of making a revised assessment order for each of the seven assessment years under Section 27 of TNVAT Act. After considering all the objections, the respondent made seven separate assessment orders for the seven Assessment Years and those assessment orders have been called in question in these writ petitions. These seven revised assessment orders made under Section 27 of TNVAT Act by the respondent, which have been called in question in the seven writ petitions shall be referred to as 'impugned orders' in plural and 'impugned order' in singular for the sake of convenience and clarity.

11. This takes us back to the lone point that was urged on behalf of the writ petitioner by learned Senior counsel.

12. Learned Senior counsel, referring to the impugned orders submitted that in all the orders as many as eight issues were taken up for revised assessment and the same are as follows:

'1] Liability on short payment of tax

2] Huge difference between purchases and sales turnover

3] Annual Scrutiny cross verification of the buyer and seller as per Annexure-I Web report

4] Verification of purchase details from other dealer Annexure II and purchase details from this dealers annexure I

5] Check post Movement Details

6] Levy of tax on deletion of assets

7] Short payment of tax

8] Other income

13. After elaborately considering the objections of the writ petitioner, which has been made by way of reply to the revisional notices, respondent, dropped revised assessment under four heads namely under heads 1, 5, 6 and 8 supra. With regard to heads 3 and 4, vide impugned orders, the same were deferred. Tax and penalty was levied with regard to heads 2 and 7 alone.

14. The lone point that is canvassed by the learned Senior counsel is that the respondent cannot dissect the revision proceedings, severe the same, defer the proceedings with regard to two heads namely Nos.3 and 4 supra and thereafter, levy tax and penalty with regard to heads Nos. 2 and 7. The pointed submission was with regard to head Nos.2 and 4. As would be evident from the narrative thus far, with regard to head No.2, tax has been levied, whereas with regard to head No.4, the same has been deferred. Learned Senior counsel pointed out that with regard to head No.2, for difference between purchases and sales turnover, the opening stock has been taken into account, but with regard to verification of purchase of details under head No.4, the same has been deferred. In other words, it is submitted that while verification of purchase details being head No.4 has been deferred, head No.2, which deals with difference between purchase and sales turnover, ought not to have been gone into.

15. As already alluded to supra, notwithstanding several averments and the affidavits filed in support of the writ petitions and grounds / contentions raised therein, the writ petition was argued on this lone submission. Responding to this lone submission, learned State counsel submitted that the law does not prohibit certain heads being severed. Learned counsel submitted that the impugned orders being passed as part of revised assessment exercise under Section 27 of TNVAT Act, there is no bar or prohibition in deferring some heads and levying tax with regard to some other heads.

16. This Court has carefully considered the rival submissions and this Court has also carefully examined the impugned orders. A perusal of the impugned order reveals that head No.2, pertains to difference between purchases and sales turnover. According to the respondent, as articulated in the impugned order, from verification of books of accounts, it was

noticed that the dealers had reported that their purchases during the year is normally low when compared to the sales and on this basis, tax was levied after examining the records furnished by the writ petitioner. With regard to head No.4, the same pertains to claim of 'Input Tax Credit' ['ITC' for brevity]. Here, the pivotal question is whether the purchases were made from unregistered dealers had to be considered. For examining this, the Assessing Authority had to necessarily look at Annexure-II of the sellers. In this regard, owing to judgment of this Court of M/s.JKM Graphics Solutions Private Limited Vs. The Commercial Tax Officer, Vepery Assessment Circle, Chennai-6 reported in (2017) 99 VST 343 (Mad), a Circular was issued being Circular No.3 of 2019 and pursuant to the Circular, the same was deferred. In the considered view of this Court, head Nos.2 and 4 are different and distinct. While head No.2 deals with the issue of sales being far in excess of the purchases. Head No.4 deals with the question as to whether purchases were made from unregistered dealers for which corresponding ITC has to be reversed at the rate of 14.5%. Therefore, on first blush, though it appears that head nos.2 and 4 are not severable, on a closer scrutiny, it comes out clearly that head nos.2 and 4 are clearly severable and therefore, the submission made by learned Senior counsel that the Assessing officer cannot dissect the heads, does not carry the writ petitioner any further in this case. In other words, this submission is negatived by this Court for the reasons that have been set out thus far.

17. With regard to head No.7 which is the other head under which tax has been levied, that pertains to short payment of tax and it is nobody's case that it is dovetailed with any of the other issues. Therefore, head No.7 is a stand apart issue.

18. Another aspect of the matter, which has been noticed by this Court is that there is no disputation or disagreement about the obtaining legal position that any number of assessment orders can be passed by an Assessing officer in exercise of revisional powers under Section 27 of TNVAT Act. When this is the obtaining legal position, this Court finds no infirmity or illegality in the respondent severing 2 out of 8 heads, deferring the same, levying tax on two other heads and dropping four other heads in favour of the writ petitioner dealer.

19. This takes us to the issue of alternate remedy.

20. As the impugned orders have been made in exercise of powers under Section 27 of TNVAT Act, there is no disputation or disagreement before this Court that a statutory appellate remedy is available against the same. A statutory appeal to the jurisdictional Appellate Deputy Commissioner is available under Section 51 of TNVAT Act. With regard to issue numbers 2 and 7

for which tax and penalty has been levied, it is open to the writ petitioner to file a statutory appeal against the same under Section 51 of TNVAT Act. If the writ petitioner chooses to file such a statutory appeal, though obvious it is made clear that it will be governed by conditions of pre deposit adumbrated in the appeal provision i.e., Section 51 of TNVAT Act. It also goes without saying that if there is any delay in filing of the appeal, it is open to the writ petitioner to seek condonation of delay as well as exclusion of time spent in the instant writ petitions interalia by applying Section 14 of Limitation Act and if the writ petitioner chooses to file a statutory appeal, if seeking condonation of delay becomes necessary and if the writ petitioner seeks condonation of delay and exclusion of time, such a case shall be dealt with by the Appellate Authority on their own merits and decided in accordance with law.

21. Before parting with this case, it is necessary for this Court to mention the obtaining legal position with regard to alternate remedy and exercise of writ jurisdiction on the teeth of alternate remedy. With regard to exercise of writ jurisdiction on the teeth of alternate remedy, it is no doubt only a self imposed restraint of Courts exercising writ jurisdiction, which have said that the same will done only in certain situation, which have been carved out as exceptions. Such situations are authority acting without jurisdiction, Appellate remedy being ineffective or not efficacious, disregarding settled position of law settled by higher Courts in the hierarchy etc., To be noted, these three exceptions are not a comprehensive adumbration of exceptions to rule of alternate remedy, but are only illustrations, which have been set out for the limited purpose of disposal of the instant case.

22. Suffice to say that it is nobody's case that the instant cases fall under any of the exceptions to alternate remedy rule.

23. With regard to alternate remedy rule itself, as already mentioned supra, it is clearly a self-imposed restraint by Courts exercising writ jurisdiction. In other words, alternate remedy rule is not a rule of compulsion, but it is a rule of discretion. Though the alternate remedy rule is not an absolute rule, Hon'ble Supreme Court, in Satyawati Tandon Case [United Bank of India Vs. Satyawati Tondon and others reported in (2010) 8 SCC 110], held that in cases pertaining to tax, cess etc., alternate remedy rule has to be applied with utmost rigour.

24. Satyawati Tandon principle was reiterated by Hon'ble Supreme Court in a subsequent judgment in K.C.Mathew case [Authorized Officer, State Bank of Travancore Vs. Mathew K.C. reported in (2018) 3 SCC 85]. Relevant paragraph in K.C.Mathew case 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)

"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.'

25. Therefore, what follows as a necessary sequitur is that

while alternate remedy and exercise of writ jurisdiction on the teeth of alternate remedy is a rule of discretion, the same has to be applied with utmost rigour when it comes to fiscal statutes. In any event, for exercise of writ jurisdiction on the teeth of alternate remedy, a protagonist of a writ petition should be able to demonstrate that it falls under one of the exceptions to the rule. That is not the case here.

26. Owing to all that have been set out supra, instant writ petitions fail and the same are dismissed, albeit, preserving the rights of the writ petitioner to prefer statutory appeal under Section 51 of TNVAT Act, subject to predeposit and delay condonation / exclusion of time, if any. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

Assistant Commissioner(CT),
Villivakkam Assessment Circle,
No.15, 16, Malligai Avenue Extention,
Kolathur, Chennai - 600 099.

+1 cc to M/s.M.Nalla Thambi,Advocate Sr.No.64299
+1 cc to The Special Government Pleader Sr.Nos.64611 & 64612

AKM/16.09.19/8P-4C /

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