

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.08.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.Nos.10156 & 10157 of 2019
and WMP.Nos.10716 & 10719 of 2019

M/s. Shanti Enterprises
Rep. By its Proprietor
Shop No.26B, Waikiki Shopping Complex
289, Purasaiwakkam High Road
Purasaiwakkam
Chennai - 600 007

Petitioner in both W.Ps.

Vs

The State Tax Officer
Choolai Assessment Circle
2nd Floor
Palaniappa Maligai
Greams Road
Chennai - 600 006

Respondent in both W.Ps.

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records of the Respondents in TIN No.33560282102 for the assessment years 2013-14 and 2015-16 dated 11.03.2019 and quash the same as illegal, arbitrary and contrary to the principle of natural justice and further direct the respondent to furnish the details sought for by the petitioner in reply dated 08.11.2018 and pass such other order or orders as the Court may deem fit and proper in the facts and circumstances of the case and thus render justice.

For Petitioner in both W.Ps : Ms.C.Rekha Kumari

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

C O M M O N O R D E R

This common order will govern both these writ petitions. In other words, this common order will dispose of both these writ petitions.

2. Ms.C.Rekia Kumari, learned counsel on record for writ petitioner in both these writ petitions and Ms.G.Dhanamadhri, learned Government Advocate on behalf of sole respondent in both these writ petitions are before this Court.

3. Subject matter of instant writ petitions arise under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)', hereinafter 'TNVAT Act' for brevity.

4. This Court is informed that these two writ petitions arise out of a common factual matrix. This Court is also informed that the central theme/core issue in both these writ petitions is one and the same and only the assessment years are different i.e., impugned order in W.P.No.10156 of 2019 pertains to Assessment Year 2013-14 and impugned order in W.P.No.10157 of 2019 pertains to Assessment Year 2015-16. Obviously numerical values will also be different.

5. With consent of learned counsel on both sides, main writ petitions are taken up and are being disposed of by this common order.

6. Writ petitioner is a registered dealer on the file of the respondent and was regularly filing monthly returns under Section 21 of TNVAT Act. Business place of the writ petitioner was inspected by the Enforcement Wing officials of the respondent Department on 03.01.2017. In the course of the investigation, the Enforcement Wing officials noticed certain aspects, which according to them, are defects and Enforcement Wing officials gave proposals.

7. Pursuant to the proposals given by the Enforcement Wing officials, two show cause notices/revisional notices dated 24.10.2018 and 25.10.2018 for the assessment years 2013-2014 and 2015-2016 respectively were issued by the respondent to the writ petitioner. On receipt of such notices, writ petitioner has sent a reply on 08.11.2018. After considering the reply of the writ petitioner and after taking into account the objections raised by the writ petitioner, the respondent passed two separate revised assessment orders bearing Reference Nos. 'TIN No.33560282102/2013-14 and TIN No.33560282102/2015-16, both dated 11.03.2019'. These two revised Assessment Orders shall hereinafter be referred to in this order as 'impugned orders' in plural and 'impugned order' in singular.

8. It is informed without any disputation or disagreement that impugned orders have been made under Section 27(1)(a) of TNVAT Act.

9. Learned counsel for writ petitioner submitted that

the writ petitioner is no doubt in the business activity of import and with regard to alleged suppression, which is one of the grounds, on which impugned orders have been passed, writ petitioner's 'Import Export Code' ('IEC') has been misused and the writ petitioner has lodged a complaint dated 11.12.2017 with the Commissioner of Customs, Chennai Custom House, Rajaji Salai, Chennai.

10. Adverting to the impugned order and also the common counter affidavit filed in these two writ petitions, learned Revenue counsel submitted that the entire matter pertains to two issues namely mismatch and purchase suppression. Adverting to the impugned order, learned revenue counsel submitted that with regard to mismatch issue, owing to the proceedings in JKM Graphics Solutions Private Limited Vs. Commercial Tax Officer, Vepery Assessment Circle, Chennai, reported in [2017] 99 VST 343 (Mad), respondent has kept the same in abeyance. In other words, respondent has not passed any revised assessment.

11. The other issue is purchase suppression. As already alluded to supra, with regard to the purchase suppression, it is the case of the writ petitioner that purchases, which are in the nature of import, were not made by the writ petitioner and some one else had misused the IEC code of the writ petitioner.

12. Learned counsel for writ petitioner strenuously contended that it is for the respondent to furnish the details of bills of entry and other import particulars, so that the writ petitioner can meet the same. It was also pointed out that vide the reply dated 11.08.2011 against the show cause notices / revisional notices dated 24.10.2018 and 25.10.2018, writ petitioner has subsequently sought for those documents, but, the same have not been furnished so far by the respondent.

13. This Court has carefully considered the rival submissions.

14. The case of the writ petitioner is that IEC Code of the writ petitioner has been misused by someone. Writ petitioner has also lodged a complaint with the jurisdictional Commissionerate, Chennai on 11.12.2017. The complaint having been given on 11.12.2017, there is no material before this Court to show any further action on the part of the writ petitioner in the last 2 ½ years to carry the complaint to its logical end. In the hearing today, there is nothing to demonstrate that the writ petitioner pursued the complaint dated 11.12.2017 stated to have been made with the Customs Commissionerate, Chennai.

15. Therefore, this Court is of the considered view that the respondent cannot be found fault with for passing the

impugned orders on the ground of purchase suppression as the respondent cannot examine the alleged misuse of IEC plea as that plea is within the domain of Customs Commissionerate. It is for the writ petitioner to carry the issue to its logical end with the Customs Commissionerate. This Court is of the considered view that writ petitioner, not being able to demonstrate that they pursued the matter with the concerned authorities in the last 2 ½ years and now be heard to contend that it is for the respondent to furnish details of bills of entry and this Court is convinced that challenge to two impugned orders cannot be predicated on this basis.

16. Be that as it may, this Court is also of the considered view that there is no impediment for the writ petitioner to pursue the complaint said to have been given before the Commissionerate and carry the same to its logical end. If the writ petitioner carries the complaint to its logical end and if something favourable to the writ petitioner comes out of the same, documents such as bills of entry and other import particulars, which are subject matter of purchase suppression can always be produced by the writ petitioner before the Appellate Authority.

17. This Court reminds itself of appellate remedy or in other words, alternate remedy aspect also. There is no dispute or disagreement before this Court that an alternate remedy by the way of a statutory appeal under Section 51 of TNVAT Act is available to the writ petitioner for challenging the impugned orders. The Appellate Authority is the 'jurisdictional Appellate Deputy Commissioner' (hereinafter 'Appellate Authority' for brevity).

18. With regard to the alternate remedy, as it unfurls in the hearing today, there is nothing to demonstrate that the order has been passed without jurisdiction or disregarded settled legal position or without giving an opportunity to writ petitioner to show cause. In other words, the rule of alternate remedy is not a rule of compulsion. It is a rule of discretion. To put it differently, alternate remedy rule is not an absolute rule. Though the rule of alternate remedy is not an absolute rule, Honourable Supreme court in Dunlop India case [Assistant Collector of Central Excise, Chandan Nagar, West Bengal vs. Dunlop India Ltd. and ors.] reported in (1985) 1 SCC 260 held in Paragraph 3 as follows:

'3.Article 226 is not meant to short circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question

or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it, that recourse may be had to Article 226 of the constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. This practice needs to be strongly discouraged.'

(underlining made by this Court to supply emphasis and highlight)

19. Thereafter, almost a quarter century later Hon'ble Supreme Court in Satyawati Tandon Case [United Bank of India Vs. Satyawati Tandon and others reported in (2010) 8 SCC 110] has held that when it comes to matters pertaining to Taxes, CESS, Revenue etc., the rule of alternate remedy has to be applied with utmost rigour. This Satyawati Tandon principle has been 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 Tandon 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.'

(Underlining made by Court to supply emphasis and highlight)

20. As already stated supra, nothing unfurled in the hearing wherein the writ petitioner was able to demonstrate that the impugned orders have been passed without jurisdiction, without opportunity to show cause or alternate remedy is ineffectual/not efficacious.

21. Suffice to say that there is nothing to demonstrate that this case, more particularly, the impugned orders does not fall under any of the exceptions to the rule of alternate remedy. Therefore, this Court is of the considered view that this is a fit case to relegate the writ petitioner to alternative remedy under Section 51 of TNVAT Act to the jurisdictional Appellate Deputy Commissioner. It is also open to the writ petitioner to pursue the complaint said to have been given to the jurisdictional Customs Commissionerate and carry the same to its logical end and place the same before the Appellate Authority in furthering the writ petitioner's case. If this happens, the jurisdictional Appellate Authority shall consider the findings of the jurisdictional Customs Commissionerate and pass suitable orders qua suppression.

22. Though obvious, it is open to the writ petitioner to seek condonation of delay under Section 51 of TNVAT Act as well as exclusion of time spent in the instant writ petition by relying on Section Section 14 of Limitation Act. If the writ petitioner makes such pleas/prayers for condonation of delay and/or exclusion of time spent in the instant writ petition by placing reliance on Section 14 of Limitation Act, such pleas/prayers of writ petitioner shall be dealt with by the Appellate Authority on their own merits.

23. In the light of the above discussion, this Court comes to the conclusion that there is no merit in the writ petitions and no ground which warrants interference in the impugned orders in writ jurisdiction has been made out. Therefore, writ petitions fail and the same are dismissed. The writ petitioner shall raise all grounds including the grounds agitated in the instant writ petition before the appellate authority, if the writ petitioner chooses to file statutory appeals under Section 51 of TNVAT Act. There shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

To
The State Tax Officer
Choolai Assessment Circle
2nd Floor
Palaniappa Maligai
Greams Road
Chennai - 600 006.

+2cc to Ms.C.Rekha Kumari, Advocate SR.69473
+1cc to the Spl Government Pleader (Taxes) SR.69985

W.P.Nos.10156 & 10157 of 2019
and WMP.Nos.10716 & 10719 of 2019

NMI(CO)
CB(09/10/2019)