IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.06.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.Nos.14596, 14598, 14599 and 14600 of 2019
and
W.M.P.Nos.14583 to 14586 of 2019

Tvl Shree Shanmuga Electricals
Represented by its Propretrix
Tmt. M.P.Selva Bharathi
2-1 Fab City
Krishangiri Bye-Pass Road
Hosur, Krishnagiri District. .. Petitioner in all W.Ps'

vs.

The Assistant Commissioner (ST)
Hosur (North) Circle
Hosur, Krishnagiri District. .. Respondent in all W.Ps'

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records in respect of the impugned Revised Assessment order TIN Nos.33853364166/2009-10, 33853364166/2010-11, 33853364166/2011-12 and 33853364166/2012-13 dated 30.03.2019 of the respondent under the Tamil Nadu Value Added Tax Act, 2006 for the year 2009-10, 2010-11, 2011-12 and 2012-13 quash the same and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and render justice.

For Petitioner (In all W.Ps') : Mr.Adithya Reddy

For Respondent (In all W.Ps') : Ms.Dhanamadhri Government Advocate (Taxes)

COMMON ORDER

This common order will govern and dispose of these four writ petitions.

2. Mr.Adithya Reddy, learned counsel on record for the sole writ petitioner in all the four writ petitions is before this Court. Ms.Dhana Madhri, learned Government Advocate (Taxes) accepts notice on behalf of the lone respondent in all the four writ petitions.

3. Considering the narrow compass on which these writ petitions turn, the main writ petitions itself are taken up for disposal with the consent of both the learned counsel.

4. As mentioned supra, instant writ petitions turn on a very narrow compass and therefore, it may not be necessary to advert to facts in great detail. Suffice to say that these writ petitions pertain to assessments under 'The Tamil Nadu Value Added Tax Act, 2006' ('TNVAT Act' for brevity).

5. There is no dispute or disagreement before this Court that facts are common with the exception of assessment years and numerical values. In these four writ petitions, relevant assessment years are 2009-10, 2010-11, 2011-12 and 2012-13 in W.P.Nos.14596, 14598, 14599 and 14600 of 2019 respectively.

6. Writ petitioner is a registered dealer under TNVAT Act. The writ petitioner filed returns for each of the aforesaid assessment years. The sole respondent issued notices, wherein it was alleged that the turnover reported by the petitioner in the returns and the turnover prepared by the petitioner's Auditor are not in tandem and that there is variation in numbers.

7. Petitioner sent a reply and ultimately the respondent passed independent orders dated 30.03.2019 in each of the four writ petitions. The writ petitions and the details of the orders passed by the respondent are as follows:

W.P.Nos.	Assessment Years	Date
14596/2019	2009-2010	30.03.2019
14598	2010-2011	30.03.2019
14599	2011-2012	30.03.2019
14600	2012-2013	30.03.2019

8. To be noted, as already mentioned supra all the aforementioned four orders are dated 30.03.2019.

9. The aforesaid orders made by the respondent shall be referred to as 'impugned orders' as the same are called in question in the instant writ petitions.

10. A perusal of the impugned orders reveal that there were three issues which came up for consideration and they are

(a) incorrect claim of 'Input Tax Credit' ('ITC' for brevity)

(b) purchase suppression and

(c) purchase and sales omission.

11. With regard to (a) and (b) viz., ITC and purchase suppression, respondent accepted the submission of the petitioner and dropped the proceedings vide the impugned orders.

12. Only with regard to (c) i.e., purchase and sales omission, the respondent held against the petitioner assessee. The relevant portion is contained in paragraph 18 of the impugned order and the same reads as follows:

> '18. Regarding the difference noticed in the sales figures disclosed in the profit and loss statement the reply filed by the dealers is not acceptable in view of the fact that the judgments relied on were delivered on different context and further the profit and loss statements are prepared by the auditors after verifying all the documents and filed before the Income Tax Department. The dealers cannot direct the auditors to prepare separate profit and loss statement one for Income Tax and another for Commercial Tax Department and as such the sales turnover reported in the Profit and loss statement is taken for the purpose of assessment and so the difference of sales turnover of Rs.59756/- is confirmed by overlooking the reply filed in this respect.'

13. Learned counsel for petitioner submitted that he is aggrieved only by the interest component. However, learned counsel for Revenue submits that interest is automatic and therefore, it cannot be gainsaid by the petitioner that interest ought not to have been levied.

14. It is also not in dispute before this Court that against the impugned order, a statutory appeal lies to the Appellate Deputy Commissioner-Sales Tax (ST), Salem.

15. Therefore, this takes us to the question of alternate remedy.

16. With regard to alternate remedy, learned counsel for

petitioner submitted that the only difficulty in pursuing the alternate remedy is that pre-deposit of a percentage of disputed amount is necessary. In the considered opinion of this Court, this can hardly be a ground to circumnavigate alternate remedy considering the facts of the present case.

17. With regard to alternate remedy qua exercise of writ jurisdiction under Article 226 of Constitution of India, the position of law has been laid down in a long line of authorities and catena of case laws. Suffice to say that the judgments in K.C.Mathew case [Authorized Officer, State Bank of Travancore Vs. Mathew K.C. reported in (2018) 3 SCC 85] and Satyawati Tandon Case [United Bank of India Vs. Satyawati Tondon and others reported in (2010) 8 SCC 110] are of utmost relevance owing to the factual matrix of the cases on hand.

18. What can be culled out from the long line of authorities and catena of case laws with regard to alternate remedy qua exercise of writ jurisdiction under Article 226 is as follows:

> 'Alternate remedy is not an absolute rule. In other words, it is not a rule of compulsion, but it is a rule of discretion.'

19. Notwithstanding the position that alternate remedy is a rule of discretion, in the long line of authorities it has been held that exercise of jurisdiction under Article 226, on the teeth of alternate remedy, will be only when there are certain specific exceptions.

20. Before this Court adverts to the exceptions, it is to be noted that in Satyawati Tondon case supra, the Honourable Supreme Court held that with regard to this rule of alternate remedy though it is a rule of discretion, it should be applied strictly and with utmost rigour with regard to recovery of taxes, CESS, fees etc.,

21. In the aforesaid backdrop, this Court examines the exceptions that can be culled out from the long line of authorities.

22. Exceptions inter-alia are those as contained in Whirlpool Corporation v. Registrar of Trade Marks, Mumbai reported in (1998) 8 SCC 1, Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad reported in AIR 1969 SC 556 and Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others reported in (2003) 2 SCC 107.

23. The exceptions can be broadly adumbrated as follows:

a) Lack of jurisdiction
b) Violation of 'natural justice principles' (NJP);

c) Alternate remedy being ineffective or not efficacious. [With regard to this exception, to borrow the language of Hon'ble Supreme Court in Commissioner of Income Tax Vs. Chhabil Dass Agarwal reported in (2014) 1 SCC 603, the alternate remedy should not be one which is from 'Caesar to Caesar's wife].

24. To be noted, the above mentioned adumbration is not exhaustive but those are only broad heads necessary for disposal of these cases.

25. In the aforesaid backdrop, considering the facts and circumstances of the instant cases, more particularly in the light of the fact that the respondent dropped proceedings under two heads and held as against the petitioner with regard to only one head, this Court is of the considered view that it would be appropriate to relegate the writ petitioner to appeal remedy which is admittedly available to the petitioner. If the petitioner chooses to file an appeal before the appellate authority against the impugned order, the appellate authority shall hear and dispose of the same in a manner known to law, uninfluenced by and untrammelled by any of the observations that have been made in this order. In other words, whatever is contained in this order are only for the purpose of disposal of the instant writ petitions and the Appellate Authority shall dispose of the appeal on its own merits and in a manner known to law if the petitioner chooses to avail the same.

26. These writ petitions are disposed of on above terms. No costs. Consequently, connected miscellaneous petitions are closed.

27. It will be open to the petitioner to seek condonation of delay if any in filing the appeal before the Appellate Authority and it will also be open to the petitioner to seek the benefit of Section 14 of Limitation Act. If the petitioner chooses to take such a recourse, such applications shall be disposed of on its own merits by the Appellate Authority.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

vsm

Note:

Registry to return the original impugned order to the counsel on record for the petitioner to enable the petitioner to pursue the alternate remedy and issue the order copy by 11.06.2019

TO

1.The Assistant Commissioner (ST),
Hosur (North) circle,
Hosur, Krishnagiri District.

+1cc to Mr.Adithya Reddy, Advocate, S.R.No. 45080

W.P.Nos.14596, 14598,
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NRJK(CO)
GN(12/06/2019)