IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 28.06.2019
Coram
THE HONOURABLE MR. JUSTICE M.SUNDAR
W.P.No.17804 of 2019
and WMP No.17206 of 2019

M/s.Sekar Exports (P) Limited
Represented by Shri K.Krishnam Raju
Managing Director
16/35, Ranganadhaswamy 2nd Street
Chrompet, Chennai - 44.
.. Petitioner

vs.

1.The Appellate Deputy Comissioner (CT)
Chennai (East), 3rd Floor,
PAPJM Annexe Building
1, Greams Road
Chennai - 6.

2.The Assistant Commissioner (CT)
Pallavaram Assessment Circle
32 & 33, 2nd Street, Sripuram
Chrompet, Chennai - 44.
.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records on the files of the 1st respondent in A.P.VAT No.95/2016 dated 25.10.2018 and quash the same as being without jurisdiction and hence invalid and illegal, and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.V.Srikanth

For Respondents : Mr.Mohammed Shaffiq,
Special Government Pleader (Taxes)

ORDER

Mr.V.Srikanth, learned counsel on record for writ petitioner is before this Court. Mr.Mohammed Shaffiq, learned Special Government Pleader (Taxes) accepts notice on behalf of both the respondents, who are official respondents.

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

3. Instant writ petition arises under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)' (hereinafter 'TNVAT Act' for brevity) ,

4. Short facts shorn of elaboration, details and particulars or in other words, factual matrix in a nutshell which is imperative for appreciating this order is as follows:

a) Writ Petitioner is a dealer under TNVAT Act.

b) Assessing Officer passed an order dated 29.04.2016.

c) Writ petitioner, carried it in appeal by way of a statutory appeal to the first respondent under Section 51 of TNVAT Act.

d) The first Appellate Authority i.e., first respondent before this Court, disposed of the statutory appeal by an order dated 25.10.2018 vide Appeal No.AP (VAT) 95/2016 (hereinafter 'impugned order' for brevity).

e) Vide the impugned order, first Appellate Authority partly remanded, partly modified and partly dismissed the statutory appeal.

f) Assailing the aforesaid impugned order, instant writ petition has been filed by writ petitioner.

5. This takes us to the grounds on which impugned order has been assailed. Though several averments and grounds have been made in the affidavit filed in support of the instant writ petition, learned counsel for writ petitioner assailed the impugned order at the hearing today on the following grounds:

a) An appeal against the impugned order lies to the 'Tamil Nadu Sales Tax Appellate Tribunal' ('TNSTAT' for brevity), but TNSTAT has already dismissed writ petitioner's appeal with regard to the same issue and the same has been carried to this Court by way of TC(R).No.27 of 2019. This Court had admitted the said Tax Case Revision on 30.04.2019 and it is pending. It is submitted that this pertains to Assessment Year 2008-09, but it is the same issue. To be noted, instant writ petition pertains to Assessment Year 2014-15.

b) If the writ petitioner files a statutory appeal to TNSTAT under Section 58 of TNVAT Act, writ petitioner has to pay the balance tax, but TNSTAT will take the same view and writ petitioner may have to come to this Court.

c) Writ petitioner pressed into service a case law being Sha Kantilal Jayantilal Vs. State of Tamil Nadu reported in [2017] 97 VST 295 (Mad), but the first Appellate Authority has not considered the same.

d) Hon'ble Supreme Court in Steel Authority of India Vs. Sales Tax Officer, Rourkela-I Circle and others reported in [2008] 16 VST 181 (SC) has interfered in first Appellate Authority's order notwithstanding alternate remedy.

6. State Counsel, who accepted notice on behalf of both the respondents, submitted that writ petitioner has already chosen to file a statutory appeal and therefore, it would be inappropriate for writ petitioner to now invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India, particularly, when a further alternate remedy by way of an appeal to TNSTAT under Section 58 is available. In other words, it is the specific submission of learned State Counsel that writ petitioner has to necessarily avail the further alternate remedy by filing a regular statutory appeal to TNSTAT inter alia under Section 58 of TNVAT Act.

7. This Court has given its careful consideration to the rival submissions and the discussion leading to considered view of this Court is as follows:

a) With regard to first submission of writ petitioner that TNSTAT has already dismissed the writ petitioner's appeal on the same point, albeit, with regard to an earlier Assessment Year being 2008-09 and the same having been carried to this Court by way of a Tax Revision Case cannot be a ground to bypass the alternate remedy. It was always open to writ petitioner to accelerate the Tax Case Revision pending before Hon'ble Division Bench of this Court and if a finding is rendered, the same will bind the Tribunal i.e., TNSTAT. Suffice to say that this cannot be a ground to bypass the alternate remedy.

b) The next point urged by writ petitioner i.e., that balance tax also has to be paid again for filing statutory appeal under Section 58 of TNVAT Act is unacceptable. If there are conditions for preferring statutory appeal, the same have to be complied with and the conditions by themselves unless there are other attendant circumstances cannot become a ground for bypassing the alternate remedy.

c) With regard to the ground that a case law was pressed into service before the first Appellate Authority i.e, first respondent and the same has not been considered, the same at best qualifies as a ground to be agitated in a regular statutory appeal. The reason is, this requires examination of records and it has to be seen whether the case law was actually pressed into service and whether it forms part of the records of the first Appellate Authority. It is ideal to leave these aspects to TNSTAT to examine the same in the absence of any other attendant circumstances.

d) With regard to the judgment of Hon'ble Supreme Court in Steel Authority of India case, as rightly pointed out by learned State Counsel that it is clearly distinguishable on facts.

e) To demonstrate that it is distinguishable on facts, two paragraphs are of relevance. They are paragraphs 6 and 11, which read as follows:

> '6. A few days thereafter, on April 19, 2006, the Assistant Commissioner disposed of the appeal filed dismissing the same and confirming the order of assessment. A second appeal was filed before the Orissa Sales Tax Tribunal (in short, "the Tribunal"). An application for stay was also filed. By order dated August 14, 2006, the Commissioner directed deposit of Rs.15 crores. The said order was challenged before the High Court and, as noted above, by the impugned order, the High Court disposed of the said petition without expressing any opinion on merits but observing that the matter was under examination by this Court.
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> 11. In normal course, we would not have entertained the plea relating to the merits of the assessment when a statutory remedy has been availed. But what shocks us is the casual manner in which the first appellate authority has disposed of the appeal. The appellate order covers pages 36 to 42 in the paper book. The first page and a part of the second page deal with various data relating

to the assessment order, the assessing officer, the registration number and the details of turnovers and the tax, etc. In paragraph 2, the observations of the assessing officer are noted and in paragraph 3, starting from pages 39 to 41, different stands of the appellant have been noted. In paragraph 4, the conclusions of the first appellate authority are noted. They read as follows:

"I have carefully gone through the impugned order of assessment averments of the learned Advocate and the materials available on record. On the first point of dispute regarding the claim of the appellant towards refund of tax of Rs.14,59,122.52 collected from the bidders, before this forum also the appellant failed to adduce any evidences regarding refund of tax to such bidders from whom tax was collected. In absence of such documentary evidences, the claim of the appellant is not credible.

The second point of dispute regarding levy of tax on the sale turn-over of Rs.1,21,03,375.18 is due to non-furnishing of declarations in forms. Hence, there is no interference from this forum on the observation of the learned S.T.O., in levying tax under Section 8(2)(b) of the CST Act.

Lastly on the point of rejection of the claim of the appellant towards branch transfer of goods valued at Rs.241,87,42,357.93 from the order of assessment it is found that the learned S.T.O. on due verification and proper examination of the material evidences has rightly taken by the learned counsel of the appellant-company and the decisions of the different courts cited are not applicable in the present case, the same is not corrected."

A perusal of aforesaid paragraphs 6 and 11 brings to light that in the aforesaid Steel Authority of India case, the assessee had availed the statutory remedy of approaching the State Tribunal and no orders were passed in the stay petition taken out in the State Tribunal, which was carried to High Court and the High Court disposal culminated in the proceedings of the Supreme Court, in which the aforesaid judgment was passed. In this case, it is a question of whether the writ petitioner should avail the alternate remedy of filing a regular statutory appeal to the State Tribunal. Furthermore, this Court is inclined to accept the submission of State Counsel that it is distinguishable on facts in the light of paragraph 11 as that was a case where in the considered view of Hon'ble Supreme Court there was complete non application of mind on the part of the first Appellate Authority. The Hon'ble Supreme Court has categorically held that it is no way to dispose of a statutory appeal. Such circumstances do not exist in the instant case.

f) Therefore, this Court is inclined to accept the submission of State Counsel that under the facts and circumstances of instant case, this is a fit case to relegate the writ petitioner to the alternate remedy i.e., appeal to TNSTAT.

g) In this regard, this Court deems it appropriate to refer to a judgment of Hon'ble Supreme Court in Satyawati Tandon Case [United Bank of India Vs. Satyawati Tondon and others reported in (2010) 8 SCC 110]. Besides Satyawati Tandon Case, there are a long line of authorities on alternate remedy and exercise of writ jurisdiction notwithstanding alternate remedy. The obtaining legal position is that 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, in Satyawati Tandon Case, Hon'ble Supreme Court had held that in cases pertaining to taxes, cess, fees etc., the rigour of rule of alternate remedy has to be applied strictly. In other words, this rule has to be applied with greater rigour in matters pertaining to fiscal laws.

h) To be noted, Satyawati Tandon principle was recently 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)

"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)

i) This Court is of the considered view that Satyawati Tandon principle as reiterated by Hon'ble Supreme Court in K.C.Mathew case applied in all force to instant case.

8. In the light of the narrative thus far, this Court considers it appropriate to dismiss the instant writ petition assailing the impugned order albeit without expressing any

opinion or view on the merits of the matter. All questions are left open to be decided by TNSTAT, if the writ petitioner chooses to file a regular statutory appeal to the Tribunal.

9. Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsm

To

1.The Appellate Deputy Comissioner (CT)
Chennai (East), 3rd Floor,
PAPJM Annexe Building
1, Greams Road
Chennai - 6.

2.The Assistant Commissioner (CT)
Pallavaram Assessment Circle
32 & 33, 2nd Street, Sripuram
Chrompet, Chennai - 44.

+1cc to Special Government Pleader(Taxes) sr.54603

W.P.No.17804 of 2019
and WMP No.17206 of 2019

ca(co)
nr 27/08/2019