IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 09.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.18950 of 2019
and
W.M.P.No.18303 of 2019

Tvl Sri Murugan Stores
Rep. by Proprietor
NO.4/47, Hanumar Koil Street,
Radha Nagar, Chrompet
Chennai - 600 044. .. Petitioner

Vs.

1.The State of Tamil Nadu
Represented by the Secretary
Commercial Taxes and
Registration Department
Fort St. George, Chennai - 9.

2.The Commercial Tax Office (ST)/
State Tax Officer
Chrompet Assessment Circle
Chennai - 600 044. .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent proceedings in TIN 33720941905/2011-12 dated 01.04.2019 quash the same and direct the 2nd respondent to unfreeze the bank transaction and pass such further or other order as this Hon'ble Court may deem fit and proper in the circumstances of this case and thus render justice.

For Petitioner : Mr.R.Sivakumar
For Respondents : Ms.G.Dhanamadhri,
Government Advocate

ORDER

Mr.R.Sivakumar, learned counsel on record for writ petitioner is before this Court. Ms.G.Dhanamadhri, learned Government Advocate accepts notice on behalf of both the respondents in the instant writ petitions, 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. Subject matter of 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.

4. This is the second round of litigation pertaining to assessment of the writ petitioner for the 'Assessment Year 2011-12' (hereinafter 'said AY' for brevity).

5. There is no disputation or disagreement that writ petitioner is a dealer under TNVAT Act and a revised Assessment Order came to be passed on 09.02.2015 for the said AY. This revised Assessment Order was assailed by writ petitioner by way of a writ petition in this Court being W.P.No.16739 of 2018, primarily with a plea that one opportunity may please be granted to writ petitioner to go before the Assessing Officer, as the limitation period prescribed for availing appeal remedy was over. A Hon'ble Single Judge of this Court, disposed of the said writ petition in and by an order dated 06.07.2018, the operative portion is contained in paragraph 7 and the same reads as follows:

> '7. Accordingly, the writ petition stands disposed of with a direction to the petitioner to pay 15% of the tax demanded within a period of three weeks from the date of receipt of a copy of this order. If the said condition is complied with, the petitioner is entitled to treat the impugned order as a show cause notice and submit their objections within a period of two weeks therefrom. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law. It is made clear that if the petitioner fails to comply with the condition imposed, the benefit of this order will not enure to the petitioner and the writ petition will stand automatically dismissed giving liberty to the respondent to initiate recovery proceedings. On the other hand, if the petitioner complies with the said condition, the demand of the balance tax for the assessment year from 2011-12 shall remain stayed till fresh orders are passed by the respondent. No costs. Consequently, the connected WMP is closed.'

6. Pursuant to the aforesaid order of this Hon'ble Court in the earlier round in this Court, second respondent Assessing Officer, commenced revised assessment proceedings afresh. There is no disputation or disagreement that a personal hearing notice was issued and personal hearing was in fact, held on 02.11.2018. Post personal hearing, the second respondent passed a revised Assessment Order dated 01.04.2019 bearing Reference No.TIN 33720941905/2011-12 (hereinafter 'impugned order' for brevity). Instant writ petition, which is the second round of litigation in this Court, has now been filed assailing the impugned order, which is culmination of earlier round of litigation.

7. Notwithstanding various averments and grounds in the affidavit filed in support of the instant writ petition, learned counsel for writ petitioner projected one submission as pivotal and primordial. That one submission is, vide impugned order, second respondent has missed the date on which Section 3(4)(b) of TNVAT Act became operational or in other words, the date on which the said provision came into force. While the impugned assessment proceedings proceeds on the basis that it came into force on 01.04.2012, learned counsel for writ petitioner submitted that it has been given effect to from 01.04.2006, but learned counsel is unable to produce any material to demonstrate that the said provision came into force on and with effect from 01.04.2006. On the contrary, learned counsel for Revenue asserts that the said provision came into force only with effect from 01.04.2012 and a perusal of current edition of TNVAT Act also reveals that entire sub-Section (4) of Section 3 obviously including 3(4)(b) came into force with effect from 01.04.2012.

8. Under the aforesaid circumstances, the campaign against the impugned order comes to an end, but it was contended that there are certain factual disputes qua impugned order which turn on merits of the matter. If that be the case, it is open to the writ petitioner to avail appeal remedy by filing an appeal to the jurisdictional Appellate Deputy Commissioner inter alia under Section 51 of TNVAT Act.

9. With regard to alternate remedy and exercise of writ jurisdiction, it is no doubt a self imposed restriction by this Court. There can also be no disputation that alternate remedy rule is not an absolute rule. In other words, it is not a rule of compulsion, but it is a rule of discretion. Notwithstanding the obtaining position that alternate remedy rule is a rule of discretion, 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 matters pertaining to Taxes, CESS, Revenue etc., the rule of alternate remedy should be applied with utmost rigour. This Satyawati Tondon 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 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)

10. What follows as an inevitable and indisputable sequitur is that alternate remedy, which though a rule of discretion and though a self imposed restriction, has to be applied with utmost rigour when it comes to fiscal laws.

11. With the above observation, this Court is of the considered view that this is a fit case to relegate the writ petitioner to the alternate remedy of an appeal to the jurisdictional Appellate Deputy Commissioner under Section 51 of TNVAT Act.

12. If writ petitioner chooses to avail alternate remedy and approach the Appellate Authority, all the conditions for pursuing an appeal will operate. Besides pre conditions for filing an appeal, if there is any delay in preferring the appeal, it is open to the writ petitioner to take out an application for 'condation of delay' (COD) as well as an application seeking exclusion of time spent in the instant writ petition by applying Section 14 of Limitation Act. If such applications are taken out i.e., COD application and application seeking exclusion of time, the same shall be dealt with and decided by the Appellate Authority on their own merits.

13. Writ petition fails and the same is dismissed, albeit, preserving the rights of the writ petitioner to avail alternate remedy in the aforesaid manner, if writ petitioner chooses to do so. Though obvious if writ petitioner chooses to avail alternate remedy all grounds including those raised in instant writ petition are left open to be raised before Appellate Authority without being impeded by this order.

14. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

vsm

To

1.The Secretary
Government of Tamil Nadu
Commercial Taxes and
Registration Department
Fort St. George, Chennai - 9.

2.The Commercial Tax Office (ST)/
State Tax Officer
Chrompet Assessment Circle
Chennai - 600 044.

+2cc to Mr.R.Sivakumar, Advocate, S.R.No. 57291
+1cc to the Government Pleader, S.R.No. 58228

W.P.No.18950 of 2019 and
W.M.P.No.18303 of 2019

JP(CO)
GN(20/08/2019)
CB(09/09/2019)