

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 11.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.15750 of 2019

&

W.M.P.No.15593 of 2019

Jain Tubes,
Represented by its Partner
Hemant Kumar Jain
662, T.H.Road
Tondiarpet, Chennai-81

.. Petitioner

Vs.

The State Tax Officer
Tondiarpet Assessment Circle
20, Kummalamman Koil Street
Tondiarpet, Chennai - 81

.. Respondent

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 respondent in TIN 33401203593/2013-14 dated 23.04.2019 and quash the same and direct the respondent to pass appropriate orders on the objections dated 16.04.2018.

For Petitioner : Mr.R.Kumar

For Respondents : MS.G.Dhanamadhri

O R D E R

Mr.R.Kumar, learned counsel on record for writ petitioner is before this Court. Ms.Dhanamadhri, learned Government Advocate accepts notice on behalf of sole respondent.

2.This matter is listed today before this Court, under the caption 'FOR ADMISSION' in the motion list.

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

4. Entire proceedings arise under the 'Tamil Nadu Valude Added Tax Act, 2006' ('TNVAT Act' for brevity).

5. Facts as culled out from the case file placed before this Court and submissions made by learned counsel are as follows:

a) Writ petitioner, in the course of business, has been filing monthly returns and there was deemed assessment under Section 22(2) of TNVAT Act. The Enforcement Wing Officers of the respondent conducted an audit, found certain discrepancies and made a proposal. It is not in dispute that pursuant to the audit by the Enforcement Wing officials, a notice was issued to the writ petitioner and the writ petitioner sent a reply.

b) Thereafter, the writ petitioner was also given an opportunity of personal hearing on 21.01.2019. Post personal hearing on 21.01.2019 granted by the respondent regarding proposal given by the Enforcement Wing for the Assessment Year 2013-14, an Assessment Order dated 23.04.2019 bearing reference TIN 33401203593/2013-14 (hereinafter 'impugned order' for brevity) came to be passed. Instant writ petition has been filed assailing the impugned order.

6. A careful perusal of the impugned order reveals the following aspects:

a) Notice has been given to the writ petitioner about the proposal of enforcement wing;

b) Writ petitioner has filed objections and all the objections have been considered;

c) To be noted, one of the objections of the writ petitioner has been sustained by the Assessing Officer and one of the proposals made by the Enforcement Wing officials has been dropped.

d) Writ petitioner has also been given a personal hearing on 21.01.2019, but the writ petitioner has not filed any representation or produced any documentary evidence in support of their claims in the personal hearing. It is not in dispute that the personal hearing was, however, availed.

7. The aforesaid trajectory of proceedings qua impugned order before the respondent are not in dispute.

8. Assailing the impugned order, Mr.R.Kumar, learned counsel on record for writ petitioner made several submissions on merits.

9. One of the pivotal submissions is to the effect that a notice was issued on 16.05.2014 threatening cancellation of

Registration Certificate and that in the said notice, it has been mentioned that the writ petitioner has filed the returns in Form I under TNVAT Act, which says 'Nil' for the year 2013-14.

10. Thereafter, the Commercial Tax Officer of the jurisdictional Assessment Circle has issued another notice dated 01.11.2017 bearing reference TIN 33401203593/2013-14 wherein there is a reference to sales effected in 2013-14.

11. Learned counsel also drew the attention of this Court to the Statement of Accounts in this regard.

12. On the aforesaid basis, learned counsel submitted that the impugned proceedings pertain to Assessment Year 2013-14 are completely misplaced. However, a perusal of the impugned order reveals that as far as the impugned order is concerned, the copy of the returns produced pertain to Assessment Year 2014-15 whereas the disputed bills are dated 04.01.2014 i.e., Assessment year 2013-14. Notwithstanding the strenuous submissions made by learned counsel on merits in this direction, considering the nature of the order which this Court proposes to pass, this Court refrains from expressing any opinion on the arguments on merits as any view expressed by this Court will bind the Appellate Authority.

13. This takes us to the alternate remedy aspect of the matter. There is no dispute about the fact that the writ petitioner has an alternate remedy by way of an appeal to the Appellate Deputy Commissioner (S.T), Chennai (North) against the impugned order. The aforesaid submissions on merits as well as several points on merits raised in the grounds in the writ petition turn heavily on facts.

14. Therefore, this Court is of the considered view that this is an appropriate case to relegate the writ petitioner to the alternate remedy of an appeal before the aforementioned Appellate Deputy Commissioner. To be noted, with regard to exercise of writ jurisdiction notwithstanding alternate remedy, the law has crystallized over a period of time in a long line of authorities. Suffice to say that law has crystallized to the effect that alternate remedy is not an absolute rule. It is not a rule of compulsion, but it is a rule of discretion. Though it is a rule of discretion, exercise of writ jurisdiction is permissible only in cases which fall within certain exceptions. Exceptions are as follows:

- a) Lack of jurisdiction;
- b) Violation of 'natural justice principles' (NJP);
- c) Alternate remedy being not efficacious, or being ineffectual.

15. To be noted, the aforesaid adumbration is not exhaustive, but merely broad heads for the limited purpose of disposal of instant writ petition. In the instant case, in the considered view of this Court, in the light of the submissions of the writ petitioner, which have been set out and alluded to supra, the writ petitioner has not been able to make out a case to show that his case falls under any of the exceptions which would compell this Court to interfere under writ jurisdiction notwithstanding the alternate remedy.

16. Learned counsel for writ petitioner did draw the attention of this Court to a Division Bench judgment of this Court in Infiniti Wholesale Ltd. case [Assistant Commissioner (CT) presently Thiruverkadu Assessment Circle, Kolathur, Chennai Vs. Infiniti Wholesale Ltd., reported in 99 VST 341 (Mad)]. This Court is of considered view that Infiniti Wholesale Ltd., case does not help the writ petitioner as it is not applicable to the facts of the instant case. Infiniti Wholesale Ltd., is a case where a show-cause notice was assailed and a conclusion was arrived at that show-cause notice deserves to be interfered with. Therefore, Infiniti Wholesale Ltd., principle does not help the writ petitioner.

17. In the case file placed before this Court, as part of the typed-set of papers, a judgment rendered by another Hon'ble Division Bench of this Court in Madras Granites Limited case [Madras Granites Limited Vs. Commercial Tax Officer, Arisipalayam Circle reported in 146 STC 642 (Mad)] has also been annexed, but learned counsel for writ petitioner did not press that into service.

18. However, learned Revenue counsel Ms.Dhanamadhri, drew the attention of this Court to Madras Granites case and pointed that Madras Granites case has been subsequently referred to by a Hon'ble single Judge of this Court in Narasus Roller Flour Mills case [Narasus Roller Flour Mills Vs. Commercial Tax Officer (Enforcement Wing), Sankagiri and Another reported in [2015] 81 VST 560 (Mad)]. It was submitted by Revenue Counsel that Madras Granites and subsequent Narasus Roller Flour Mills case following Madras Granites is for the principle that whenever there is an audit by the Enforcement Wing, the Assessing Officer should apply his/her mind independent of the proposal of the Enforcement Wing and make an independent Assessment.

19. Therefore, in the instant case taking this Court through the impugned order, learned Revenue counsel pointed out that Assessing Officer, in the course of assessment, after giving opportunity to the writ petitioner Assessee to file objections and after affording an opportunity of personal hearing, has applied Assessing Officer's mind independently and

passed the impugned order. To support her contention, learned Revenue counsel drew my attention to that part of the impugned order where one head proposed by the Enforcement wing pertaining to sale of used cars in the months of August 2013 and December 2013 and tax not being paid properly on the same has been dropped after carefully examining the bank statement that has been produced by the writ petitioner Assessee.

20. To be noted, learned counsel for writ petitioner did not argue or project Narasus Roller Flour Mills principle. Narasus Roller Flour Mills principle was not pressed into service either. However, as Madras Granites supra has been annexed to the typed-set of papers, this Court took it upon itself to consider the submissions made by learned counsel for Revenue.

21. In the light of the narrative thus far, this Court has no difficulty in accepting the submission of the learned counsel for Revenue that considering the factual matrix of the instant case, it cannot be gainsaid that there is violation of Narasus Roller Flour Mills principle.

22. The other submission, which the learned counsel for writ petitioner attempted to project was that there is violation of NJP. A careful perusal of the impugned order and the undisputed facts that emerged in the hearing today from the submissions made reveal that this Court is unable to persuade itself to believe that there has been violation of NJP. In this regard, this Court deems it appropriate to extract entire paragraph 4 of the impugned order, which reads as follows:

'4. To a notice issued to the dealers, the dealers have filed copies of purchase bills and return copies for verification. The copy of return relating to the sellers which were produced were verified and found that, the transactions belongs to the assessment year 2014-15 whereas the disputed bills are dated 4.1.2014 (i.e., 2013-14). further the dealers have reported in Annexure I for the transactions of Rs.1,57, 43,500.00 as through Invoice No.17305. But the invoice number on which the Input Tax Credit claimed is 28851. The evidence produced in support of their contention are not convincing and justifiable. Therefore, the objections raised by the dealers are over ruled and the proposal is confirmed.

Regarding sales of assets, they produced recorded evidence that, they had already reported the fact of their sales of used cars in the month of August 2013 and Dec. 2013 and paid taxes due thereon properly. They had produced bank statement in support

of their stand which was verified and found to be correct. Hence the proposal of assessment on the sale of asset is dropped.

Further in order to cater the needs of natural justice, the dealers were given an opportunity for personal hearing on 21.01.2019. The dealers had neither filed any written representation nor produced any documentary evidence in support of their claim at the time of personal hearing.'

23. A perusal of aforesaid paragraph 4 in the impugned order and aforesaid trajectory, which remains undisputed, as alluded to supra, leaves this Court with a view that there is no ground to persuade this Court to believe that there is violation of NJP.

24. With regard to alternate remedy itself, there is reference to a long line of authorities supra and the position that alternate remedy qua exercise of writ jurisdiction is a rule of discretion and it is not a rule of compulsion, but subject to exceptions that have been carved out.

25. In the considered view of this Court for the purpose of this order it will suffice to refer to Satyawati Tondon case [United Bank of India Vs. Satyawati Tondon and others reported in (2010) 8 SCC 110] and K.C.Mathew Case [Authorized Officer, State Bank of Travancore Vs. Mathew K.C. reported in (2018) 3 SCC 85].

26. In Satyawati Tondon case, Hon'ble Supreme Court has held that rule of alternate remedy has to be construed strictly and with utmost rigour when it comes to matters relating to taxes, CESS, fees etc., In other words, rule of alternate remedy has to be construed with utmost rigour when it comes to fiscal laws in general. Learned counsel for writ petitioner is unable to project any reason whatsoever before this Court so as to say that alternate remedy adverted to above cannot be pursued in the instant case. Before this Court proceeds further, it is necessary to notice that Satyawati Tondon case has been subsequently reiterated by the Hon'ble Supreme Court in K.C.Mathew Case and the relevant paragraph is Paragraph 10, which 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.'

27. The writ petitioner, not being able to demonstrate that alternate remedy is neither ineffectual or not efficacious, in the considered opinion of this Court need not have embarked upon the exercise of making repeated submissions which assail impugned order on merits. To be noted, submissions assailing impugned order on merits are left open, as already mentioned supra elsewhere in this order, as this Court is relegating the writ petitioner to the alternate remedy of appeal.

28. Notwithstanding the aforesaid position, this Court, while dismissing the writ petition leaving it open to the writ petitioner to pursue the aforesaid alternate remedy, refrains itself from imposing costs.

This writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

gpa

To

The State Tax Officer
Tondiarpet Assessment Circle
20, Kummalamman Koil Street
Tondiarpet, Chennai - 81

+1cc to Mr.R.Kumar, Advocate sr.46789

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