IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 02.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.18482 of 2019
&
W.P.No.17798 of 2019

Tvl. Sampavi Properties
Represented by its Partner K.Parthasarathy
No.39-B, P.T.Rajan Salai
K.K.Nagar
Chennai - 600 078. ... Petitioner

Vs.

1.The Joint Commissioner (CT)
Enforcement - I
Greams Road
Chennai - 600 006.

2.The Assistant Commissioner (ST)
Ashok Nagar Assessment Circle
Commercial Taxes Buildings
Greams Road, Chennai - 600 006. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorar calling for the records on the files of the 2nd respondent in Rc.463/2018/A4 dated 07.05.2019 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan

For Respondents : Ms.G.Dhanamadhri
Government Advocate

O R D E R

Mr.R.Senniappan, learned counsel on record for writ petitioner is before this Court. Ms.G.Dhanamadhri, learned Government Advocate accepts notice on behalf of both the official respondents.

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

3.Subject matter of the 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 brevity.

4. This is the second round of litigation.

5.Earlier, proceedings were initiated against the writ petitioner under TNVAT Act and Assessment Order came to be passed with regard to Assessment Year 2015-16 and this Assessment Order is dated 15.10.2018. This earlier Assessment Order was assailed by the writ petitioner by way of a writ petition in this Court being W.P.No.34067 of 2018 and the same came to be disposed of by this Court on 20.12.2018.

6. The operative portion of the order is contained in Paragraph 9 and the same reads as follows:

> '9. Accordingly, this writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the Assessing Officer to redo the assessment under the following terms and conditions:
>
> a) The petitioner shall file their reply along with payment of 10% tax liability within a period of three weeks from the date of receipt of a copy of this order.
>
> b) On receipt of such reply and payment, the respondents shall inform the date of personal hearing to the petitioner.
>
> c) On completion of such personal hearing, the Assessing Officer shall pass the order of assessment on merits and in accordance with law within a period of six weeks thereafter.
>
> No costs. Consequently, the connected miscellaneous petition is closed.'

7. Pursuant to the aforesaid order of this Hon'ble Court, the second respondent commenced proceedings afresh. The proceedings commenced afresh culminated in an order dated 07.05.2019 bearing reference Rc.463/2018 A4, hereinafter 'impugned order' for the sake of brevity and clarity.

8. Instant writ petition has been filed assailing the impugned order.

9. There are two main submissions that are being made by learned counsel for writ petitioner. One submission is that there should have been a revised assessment under Section 27 of TNVAT Act. Second submission is that the objections given by the writ petitioner have not been considered by the second respondent in passing the impugned order.

10. With regard to this second ground, it is submitted that there is a two fold violation. It is the case of the writ petitioner that it is not in conformity with the directions given by this Court in the earlier order and it is not in conformity with Steel Authority of India Vs. Sales Tax Officer, Rourkela-I Circle and Others reported in [2008] 16 VST 181 (SC) laid down by Hon'ble Supreme Court.

11. Learned Government Advocate/Revenue counsel, who has accepted notice on behalf of both the respondents, brings to the notice of this Court that this is a case where the writ petitioner has contravened Section 2(15) and Section 3 of TNVAT Act and therefore, the question of deemed assessment will not arise. In other words, it is the submission of learned Revenue counsel that the question of deemed assessment under Section 22 (2) will arise only when monthly returns are filed under Section 21 of TNVAT Act, which is a statutory obligation cast on any dealer under TNVAT Act and that the writ petitioner dealer under TNVAT act has not complied with the statutory obligation cast on the writ petitioner under Section 21 is the case of the writ petitioner. This would amount to begging the question that there was no assessment under Section 22, is learned Revenue counsel's say. With regard to objections not being considered, attention of this Court was drawn to relevant paragraphs in the impugned order and the same reads as follows:

> 'A notice was issued to the dealer dated 01.03.2019 offering them a personal hearing.
>
> On 06.03.2019 one authorised representative of the dealer Thiru,Selvaraj [Mobile No.97910 46555] appeared before the assessing authority for Personal Hearing with an objection letter dated 04.03.2019. Further the dealer has filed a letter dated 14.03.2019 with copies of certain documents to defend their case.'

12. Adverting to the aforesaid portion of the impugned order, learned Revenue counsel submits that it cannot be gainsaid that the second respondent has not considered the objections.

13. By way of reply, learned counsel for writ petitioner submitted that even if there is no deemed assessment under Section 22(2) of TNVAT Act, the Authority should have resorted to best judgment under Section 22(4) of TNVAT Act. This is a case of escapement of assessment and therefore, best judgment assessment does not apply. It is left open to the writ petitioner to raise this plea before the Appellate Authority.

14. Whether the objections have been considered comprehensively and whether the manner in which the objections have been considered is acceptable in law are all in the realm of grounds of appeal.

15. This takes us to the alternate remedy aspect. There is no dispute before this Court that an alternate remedy is available to the writ petitioner i.e., by way of an appeal to the jurisdictional Appellate Deputy Commissioner under Section 51 of TNVAT Act. With regard to alternate remedy, from a long line of authorities it comes out clearly 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 in Satyawati Tandon Case [United Bank of India Vs. Satyawati Tondon and others reported in (2010) 8 SCC 110] , Hon'ble Supreme Court has held that with regard to cases pertaining to taxes, cess etc., i.e., fiscal laws in general, alternate remedy rule has to be applied with utmost rigour. To be noted, Satyawati Tandon case 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].

16. In the aforesaid view of the matter, if the writ petitioner has any grievance about the manner in which the objections have been considered by the second respondent in the impugned order and the findings returned by the second respondent in the impugned order on the teeth of the objections of the writ petitioner, they are all in the realm of grounds of appeal i.e., statutory appeal. It also turns on certain factual aspects.

17. Therefore, this Court is of the considered view that this is a fit case to relegate the writ petitioner to alternate remedy by way of appeal to the jurisdictional Appellate Deputy Commissioner under Section 51 of TNVAT Act. If the writ petitioner chooses to avail alternate remedy and if there is any delay in filing the appeal, it is open to the writ petitioner to file an application seeking condonation of delay and exclusion of time spent in this Court in the instant writ petition by

placing reliance on Section 14 of Limitation Act and if such applications are taken out, the same shall be dealt with and disposed of on their own merits uninfluenced by this order.

This writ petition fails and therefore, is dismissed albeit reserving the rights of the writ petitioner to avail alternate remedy under Section 51 of TNVAT Act. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Note to Office: Original impugned order shall be returned to the learned counsel on record for writ petitioner to enable the writ petitioner to file statutory appeal.

To

1.The Joint Commissioner (CT)
Enforcement - 6
Greams Road
Chennai - 600 006

2.The Assistant Commissioner (ST)
Ashok Nagar Assessment Circle
Commercial Taxes Buildings
Greams Road, Chennai - 600 006

Copy to

The Section Officer,
ER Section, High Court, Madras.

+1cc to M/s.R.Senniappan, Advocate Sr.54793

W.P.No.18482 of 2019

gp[co]
srg 13/08/2019