

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 17.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.Nos.16714 & 16764 of 2019

&

W.M.P.Nos.16327 and 16373 of 2019

Eaton Power Quality Pvt. Ltd.,
Represented by its DGM Finance Mr.A.Devaraj
Safexpress Logistics Park
Adayalampattu
Vanagaram, Chennai - 600 095 .. Petitioner
in both W.Ps.

Vs.

Commercial Tax Officers
Vanagaram Assessment Circle
No.176-B, MTH Road
Villivakkam
Chennai - 600 049 ... Respondent
in both W.Ps

Prayer in W.P.No.16714 of 2019: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the records in the proceedings of the Respondent in Assessment Order CST/1308920/2016-17 dated 29.04.2019 issued by the respondent and quash the same as arbitrary and illegal.

Prayer in W.P.No.16764 of 2019: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the records in the proceedings of the Respondent in Assessment Order TIN/33946265047/2016-17 dated 30.04.2019 issued by the respondent and quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

For Respondents : Ms.G.Dhanamadhri
Government Advocate

O R D E R

Mr.Joseph Prabakar, learned counsel on record for writ petitioner is before this Court. Ms.G.Dhanamadhri, learned Government Advocate accepts notice on behalf of sole respondent in both these writ petitions.

the main writ petitions itself are taken up, heard out and is being disposed of.

3. Two Assessment Orders, one dated 29.04.2019 and another dated 30.04.2019, pertaining to CST/1308920/2016-17 and TIN/33946265047/2016-17 respectively are called in question in these two writ petitions.

4. The facts are common albeit change in numerical values.

5. Short facts shorn of elaboration, particulars and details or in other words bare minimum facts necessary for disposal of this writ petition are as follows:

a) Writ petitioner claims that it is engaged in the sale of Uninterrupted Power Supply (UPS) and batteries thereto.

b) Though several grounds have been raised in the affidavit filed in support of the writ petition, in the light of the undisputed position that an alternate remedy by way of an appeal against the aforesaid impugned orders is available to the writ petitioner i.e., appeal to the Appellate Deputy Commissioner (CT), Chennai (South), the submissions in the hearing were restricted to three grounds, which are as follows:

a) Rate of Tax for UPS was put in issue;

b) Form WW being Auditor Certificate was sought to be revised, but the respondent did not permit the same;

c) Respondent has not given an opportunity of personal hearing and therefore, there is violation of 'principles of natural justice' (NJP).

6. Learned counsel for Revenue, who accepted notice, advertent to the impugned orders points out that personal hearing was granted and the same has been articulated in the impugned order itself. Relevant paragraph in the impugned order dated 29.04.2019 reads as follows:

'Accordingly a notice was issued to the dealer in CST/130890/2016-17 on 30.04.2018 which was duly served on 30.04.2018. To this notice, the dealers have requested 90 days time to submit declaration forms and proof of exports. Personal hearing also made on 12.07.2018. Hence, a final notice was issued to the dealer on 31.07.2018 to file their reply along with declaration forms and also granted an opportunity of personal hearing on 10.06.2018. To this final notice, the dealers have filed their reply on 13.08.2018 in their

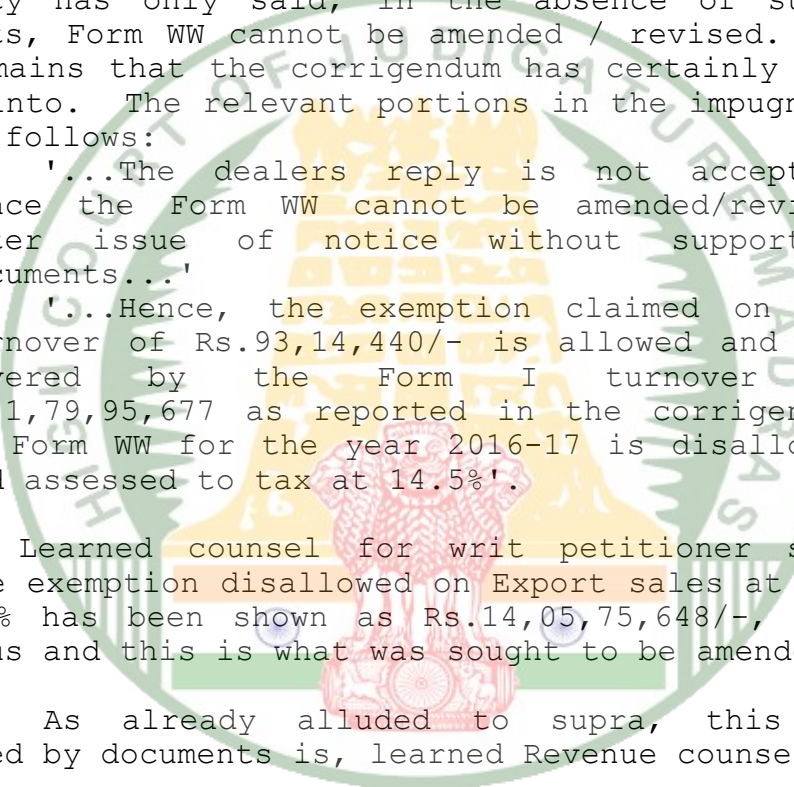
letter dated 13.08.2018. They have also availed the opportunity of personal hearing on 13.08.2018.'

This is not disputed.

7. Learned counsel for writ petitioner very persuasively submitted that Form WW, being the Auditor's Certificate, was sought to be revised and a corrigendum was filed, but the same has not been considered.

8. In response to this, learned counsel taking this Court through the impugned order, submitted that the Authority has only said, in the absence of supporting documents, Form WW cannot be amended / revised. However, fact remains that the corrigendum has certainly not been looked into. The relevant portions in the impugned order read as follows:

'...The dealers reply is not accepted, since the Form WW cannot be amended/revised after issue of notice without supporting documents...'

'...Hence, the exemption claimed on the turnover of Rs.93,14,440/- is allowed and not covered by the Form I turnover of Rs.1,79,95,677 as reported in the corrigendum to Form WW for the year 2016-17 is disallowed and assessed to tax at 14.5%'.


9. Learned counsel for writ petitioner submitted that the exemption disallowed on Export sales at the rate of 14.5% has been shown as Rs.14,05,75,648/-, which is erroneous and this is what was sought to be amended.

10. As already alluded to supra, this is not supported by documents is, learned Revenue counsel's say.

11. Further trajectory of hearing today brings to light that rate of tax for UPS projected by the writ petitioner has been rejected originally on the ground that the product is not UPS at all. As far as the corrigendum to Form WW is concerned, this Court is of the view that it will serve the interest of Revenue as well as the writ petitioner, if the Appellate Authority is directed to look into the corrigendum to Form WW, if supporting documents are produced before the Appellate Authority.

12. Before making the operative portion of this order, this Court considers it necessary to make it clear that all questions on merits are left open. This is more so as several grounds on merits have been raised in the affidavit filed in support of the writ petition and this court is relegating the writ petitioner to the alternate

13. With regard to alternate remedy itself, more particularly with regard to exercise of writ jurisdiction notwithstanding alternate remedy what can be culled out from a long line of authorities of the Hon'ble Supreme Court is that, Alternate remedy is not absolute rule. It is not a rule of compulsion, but it is a rule of discretion. Though this is a rule of discretion, Hon'ble Supreme Court in Satyawati Tandon Case [United Bank of India Vs. Satyawati Tandon and others reported in (2010) 8 SCC 110] held that that when it comes to matters pertaining to taxes, cess, fees etc., the rigour of applying alternate remedy should be very high and the same has to be applied very strictly. This 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]. Relevant paragraph in K.C.Mathew case is Paragraph 10 and the same reads as follows:

'10. In Satyawati Tandon 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.'

14. What can further be seen from the long line of authorities on the rule of alternate remedy is that exceptions to alternate remedy rule have also been laid down by Hon'ble Supreme Court and broadly they are

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

15. To be noted, the aforementioned adumbration is not exhaustive, but are only broad heads for the limited purpose of disposal of instant cases on hand.

16. In the instant cases, in the light of narrative thus far, this Court is of the considered view that this case does not fall under any of the aforesaid exceptions. It is nobody's case that the Authority has passed the impugned orders without jurisdiction. With regard to NJP, discussion supra will reveal that personal hearing has admittedly been granted to the writ petitioner. It is also nobody's case that alternate remedy is ineffective, ineffectual or not efficacious.

17. However, the issue regarding corrigendum to Form WW shall be looked into by Appellate Authority as Appellate Authority is also an Authority on facts. This Course is being adopted by this Court based on the submissions made to the effect that this matter turns

heavily on facts and supporting documents.

18. Owing to all that have been set out supra, the following order is passed:

a) Impugned orders are not interfered with and all questions on merits are left open. Impugned orders are not interfered with on the ground of availability of effective and efficacious alternate remedy. In other words, no view is expressed on merits.

b) The rider will be, if the writ petitioner chooses to avail the alternate remedy by filing an appeal to the Appellate Authority, namely Appellate Deputy Commissioner (CT), Chennai (South), the Appellate Authority shall consider the issue of corrigendum /amendments to Form WW (Auditor Certificate) inter alia by permitting the writ petitioner to file supporting documents.

c) If there is any delay in filing appeal before Appellate Authority, it is open to the writ petitioner to take out an appropriate application and also seek the benefit of Section 14 of Limitation Act. If this Course is adopted it is left open to the Appellate Authority to decide the same on its own merits.

With the above directions, both these writ petitions are disposed of. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

gpa
To
The Commercial Tax Officers
Vanagaram Assessment Circle
No.176-B, MTH Road
Villivakkam Chennai - 600 049

+1cc to Mr. Joseph Prabakar , Advocate SR.No. 49917

+1 cc to spl Government Pleader Sr.No. 50033

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