IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: **21.06.2019**

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.16888 of 2019
&
W.M.P.No.16477 of 2019

Tvl.Jeyapathi Marketing
Rep. By its Proprietor Mr.J.Lingadurai
No.1/298, Kannappan Street
Nanmanglam, Kovilampakkam
Chennai – 600 117 .. Petitioner

Vs.

The Assistant Commissioner (ST)
Madipakkam Assessment Circle
26, 4th Main Road, BHEL Nagar
Medavakkam, Chennai-100 .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the records on the files of the respondent TIN/33580988057/2013-14 dated 30.04.2019 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to law and direct the respondent to pass fresh orders in pursuance to the petitioner representation dated 30.05.2019 or issue such other writ, direction as this Hon'ble Court think deem and fit proper in the circumstance of the case and render justice.

For Petitioner : Mr.D.Vijayakumar

For Respondent : Ms.Dhanamadhri
Government Advocate

O R D E R

Mr.D.Vijayakumar, learned counsel on record for writ petitioner is before this Court. Ms.G.Dhanamadhri, learned Government Advocate accepts notice on behalf of lone official respondent.

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

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

a)Writ petitioner is a dealer in household articles and distributor of certain products. Writ petitioner is registered under the 'Tamil Nadu Value Added Tax, 2006 (Tamil Nadu Act 32 of 2006' ('TNVAT Act' for brevity).

b) Writ petitioner was filing monthly returns under Section 21 of TNVAT Act and there was deemed assessment under Section 22(2) of TNVAT Act.

c) The case of the writ petitioner was selected for scrutiny as part of random scrutiny and summons dated 19.07.2018 bearing reference TIN/33580988057/2013-14 was issued.

d) Writ petitioner, admittedly, did not respond to the summons, as can be culled out from the case file placed before this Court.

e) Thereafter, a summons captioned 'Intimation Notice for the Confirmation of Order' dated 29.03.2019 bearing reference TIN/33580988057/2013-14 was issued. This also did not evoke any reply or response from writ petitioner. To be noted, relevant Financial year, which is also Assessment Year is 2013-14.

f) Ultimately, the respondent passed an order dated 30.04.2019 bearing reference TIN/33580988057/2013-14 (hereinafter 'impugned order' for brevity).

g) In the impugned order, respondent has articulated that the writ petitioner, even after receipt of aforesaid summons, proposals etc., has not furnished books of accounts as well as purchase and sales details. It has also been recorded that the dealer i.e., the writ petitioner, has not cooperated.

h) The aforesaid summons dated 19.07.2018 and the intimation notice dated 29.03.2019 have been cited as Nos.4 and 5 respectively in the reference in the impugned order.

i) The impugned order, besides disallowing exemption, determining taxable turnover and arriving at the balance, has also imposed penalty at the rate of 150%. This penalty has been imposed under Section 27(4) of TNVAT Act.

j) Stating that the writ petitioner is aggrieved by the impugned order, the instant writ petition has been filed.

4. Having set out the factual matrix in a nutshell, this Court now proceeds to examine the submissions made. Learned counsel for writ petitioner submitted that it would be appropriate to give one more opportunity to the writ petitioner to produce books of accounts as well as purchase and sales details. It was submitted that writ petitioner could not respond to the summons and more particularly aforesaid summons dated 19.07.2018 and intimation notice dated 29.03.2019 owing to ill-health.

5.An outpatient registration issued by a hospital and diagnostic report have also been filed as part of case file. From the perusal of the same, this Court finds that there is no medical report to the effect that writ petitioner was advised bed rest. There is no medical report to the effect that writ petitioner could not attend to his day-to-day work. Even if there is such a medical report, it is for the writ petitioner to make necessary alternate arrangements.

6. Be that as it may, it was also submitted that the aforesaid summons and intimation notice have been issued proposing revision under Section 27(1)(2) of TNVAT Act and therefore, the penalty imposed vide the impugned order is impermissible. This Court considers it appropriate to leave this question open in the light of alternate remedy available to the writ petitioner.

7.It is not in dispute that the writ petitioner has an alternate remedy by way of an appeal under Section 51 of TNVAT Act. There is no disputation or disagreement before this Court that this appeal i.e., alternate remedy, lies to the Appellate Deputy Commissioner of Commercial Taxes (East). In other words, it lies to the jurisdictional Deputy Commissioner of Commercial Taxes.

8.With regard to alternate remedy, there are a long line of authorities rendered by Hon'ble Supreme Court.

9.What comes to light very clearly from this long line of authorities is that alternate remedy is not an absolute rule. It is not a rule of compulsion and it is only a rule of discretion. Even though it 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] has held that when it comes to writ petitions pertaining to taxes, cess and other levies or in other words, fiscal laws in general, the rigour of rule of alternate remedy is very high and that it has to be applied with greater rigour. This ***Satyawati Tandon*** principle was reiterated by the 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's*** case 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)*
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> > *"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.'

10. In the instant case, it is also brought to the notice of this Court that the statutory appeal i.e., alternate remedy, has to be preferred within 30 days from the date of receipt of the impugned order. It is submitted that the impugned order dated 30.04.2019 was received by the

writ petitioner on 09.05.2019. Be that as it may, it is brought to the notice of this Court that under Section 51 of TNVAT Act, there is a provision for Appellate Authority to condone delay albeit subject to a cap of 30 days. In other words, there is a cap of 30 days. The writ petitioner is well within this 30 days.

11. In the aforesaid scenario, this Court deems it appropriate to pass the following order:

a) This Court is not interfering with the impugned order in the light of alternate remedy or in other words by applying the rule of alternate remedy on the touchstone of ***Satyawati Tandon*** principle. In other words, this Court does not express any opinion on the merits of the matter qua the impugned order;

b) It is open to the writ petitioner to prefer an appeal to the aforesaid Appellate Authority i.e, Appellate Deputy Commissioner of Commercial Taxes (East). It is open to the writ petitioner to seek 'Condonation of Delay' ('COD' for brevity) and the benefit of Section 14 of Limitation Act and if the writ petitioner chooses to do so, the same shall be dealt with and disposed of by the Appellate Authority on its own merits. Subject to COD, if the Appellate Authority entertains the matter on merits in the light of sub-sections (2) and (3) of Section 27 of

TNVAT, it is made clear that it is open to the Appellate Authority to look into books of accounts, sales / purchase bills and other documents, if the writ petitioner is able to convince the Appellate Authority that sufficient reasons exist for the Appellate Authority to look into the documents. However, this issue will be dealt with by the Appellate Authority on its own merits.

This writ petition is disposed of with the above observations. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

21.06.2019

Speaking order: yes/no
Index:yes/No
gpa

To

The Assistant Commissioner (ST)
Madipakkam Assessment Circle
26, 4th Main Road, BHEL Nagar
Medavakkam, Chennai-100

M.SUNDAR, J.,

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