IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.NO.20913 OF 2019
and
WMP No.20111 & 20112 of 2019

Tvl.Sri Murugan Agencies
Rep. by M.Murugaiyan (Proprietor)

..Petitioner

-Vs-

The Commercial Tax Officer
Nagapattinam Assessment Circle
Commercial Taxes Buildings
Court Campus, Veliyapalayam
Nagapattinam.

..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the respondent vide impugned notice dated 10.01.2018 for the assessment year of 2012-13 culminating in the consequential order dated 16.05.2018 and quash the same as erroneous, illegal and consequently direct the respondent to conduct fresh enquiry by affording personal hearing to the petitioner.

For Petitioner : Mr.Kulandai Velu

For Respondent : Mr.Mohammed Shaffiq,
Special Government Pleader (Taxes)

ORDER

Mr.Kulandai Velu, learned counsel on record for sole writ petitioner is before this Court. Mr.Mohammed Shaffiq, learned Special Government Pleader (Taxes), who accepts notice on behalf of the sole respondent is before this Court.

2. With consent of learned counsel on both sides, main writ petition 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 clarity.

4. Writ petitioner is a dealer under TNVAT Act.

5. Subject matter of instant writ petition, pertains to 'Assessment Year 2012-13' (hereinafter 'said AY' for the sake of convenience and clarity).

6. It is submitted by learned counsel for writ petitioner that monthly returns were being filed under Section 21 of TNVAT Act and there was deemed assessment under Section 22(2) of TNVAT Act. It is submitted by learned counsel for writ petitioner that annual turnover of writ petitioner in said AY was over Rs.1 crore, owing to which, writ petitioner furnished annual returns with certificate from the Auditor in the prescribed form. This Court is informed that the prescribed form is Form WW.

7. Respondent noticed that there were differences and discrepancies between monthly returns filed by writ petitioner and the annual returns as filed in the aforesaid Form WW. Therefore, revisional notices dated 10.01.2018 and 23.03.2018 were issued to writ petitioner, pointing out that there are discrepancies and differences between the returns filed by writ petitioner and the annual returns in Form WW, which has also been filed by writ petitioner. Vide these revisional notices, writ petitioner was called upon to send objections and explain the differences. Writ petitioner sent objections vide a letter, which is undated, but this letter was admittedly received by the respondent on 15.05.2018. Respondent has carefully considered the objections and come to the conclusion that writ petitioner has not been able to explain the difference of purchases with reference to Ledger account and purchases. On this basis, objections were overruled and a revised assessment order dated 16.05.2018, bearing reference No.TIN 33813903508/2012-13 came to be passed. This revised assessment order along with the aforesaid revisional notice dated 10.01.2018, which preceded the same have been assailed in the instant writ petition and therefore, the two shall collectively be referred to as 'impugned proceedings' for the sake of convenience and clarity. To be noted, while 10.01.2018 is a revisional notice, 16.05.2018 is a revised assessment order under Section 27 of TNVAT Act. Therefore, for the sake of convenience, as both are assailed in the instant writ petition, they are collectively be referred to as 'impugned proceedings'.

8. In an attempt to buttress his case, learned counsel for writ petitioner pressed into service a judgment of this Court made in JKM Graphics Solutions Private Limited Vs. Commercial Tax Officer, Vepery Assessment Circle, Chennai, reported in

[2017] 99 VST 343 (Mad). To be noted, though very many averments and grounds have been raised in the affidavit and though Girdhari Lal case (M/s.Girdhari Lal Naneelal Vs. The Sales Tax Commissioner reported in (1976) 3 SCC 701) has also been annexed to the typed set of papers, learned counsel for writ petitioner, in the hearing, pressed into service JKM Graphics case.

9. In response to the submissions made by learned counsel for writ petitioner, learned State counsel pointed out that JKM Graphics case does not help the writ petitioner, as it is clearly distinguishable on facts. It is the stated position and pointed submission of learned State Counsel that JKM Graphics case is a case of mismatch, wherein the mismatch is between the returns filed by the dealers and the data available with the Department. Unlike JKM Graphics case, in the instant case, the discrepancy is between two sets of returns both filed by writ petitioner. In other words, it is submitted that the discrepancy is between two returns, where both returns have been filed by the writ petitioner. One is the monthly returns and the other is annual statutory returns filed in the prescribed form viz., Form WW, as the annual turnover of writ petitioner exceeded Rs.1 Crore in said AY, as mentioned supra. Pointing out this vital difference, learned counsel submits that unlike JKM principle, which was a case of mismatch between returns filed by writ petitioner and the data available with the Department, this is a case of discrepancies between two returns, where both the returns have been filed by the writ petitioner. This takes us to the short facts set out in JKM Graphics case.

10. Short facts shorn of elaboration set out in JKM Graphics case is captured in paragraphs 1 and 2 of the said order, which read as follows:

> 'The petitioners in all these writ petitions are registered dealers on the file of the respective Assessing Officers under the provisions of the Tamil Nadu Value Added Tax Act, 2006 [in short “TNVAT Act”] and or the Central Sales Tax Act, 1956 [in short “CST Act”]. These cases were clubbed together as a common issue arises pertaining to the reversal of Input Tax Credit [in short “ITC”] effected by the respective Assessing Officers of the registered dealers. Therefore, it may not be necessary to refer to the facts and circumstances of each case and suffice to take such of those facts, which are necessary to decide as to the correctness of the procedure, adopted by the respective Assessing Officers, while reversing the ITC availed by the dealers.

2. The reversal of ITC are at both ends, namely, at the end of the selling dealer as well as the end of the purchasing dealer. But the basis of such reversal is common to both the dealers, since the reversal has taken place, based on verification done by the respective Assessing Officers or at the direction of superior authorities, by comparing the returns filed by the purchasing/selling dealer with that of the date maintained by the Commercial Tax Department. Thus, over a period of time, the Assessing Officer through out the State of Tamil Nadu have been issuing notices, proposing to reverse the Input Tax availed by the dealers by pointing out that the returns filed by the dealers, do not match with the data maintained by the Department. Owing to large number of cases being filed raising similar issues, it turned out be called as mismatch/web report batch of cases.'

(Underlining made by Court to supply emphasis and highlight)

11. A perusal of above extracted paragraphs, as captured and encapsulated in JKM Graphics case, leaves this Court with the considered view that the submission made by learned State counsel that JKM Graphics case is clearly distinguishable on facts, is acceptable.

12. Therefore, the submission of learned counsel for writ petitioner that respondent should have given details of mismatch and then called upon the writ petitioner to explain the same pales into insignificance. This is more so, as rightly pointed out by learned State counsel, both the returns have been filed by writ petitioner.

13. As the lone ground on which challenge to impugned proceedings is predicated fails, this takes us to the alternate remedy aspect.

14. Learned State counsel points out that alternate remedy by way of an appeal to the jurisdictional Appellate Deputy Commissioner is available to the writ petitioner under Section 51 of TNVAT Act against the revised Assessment Order dated 16.05.2018.

15. With regard to alternate remedy, this Court notices that rule of alternate remedy is a self imposed restraint qua Courts exercising writ jurisdiction. It is not a rule of compulsion, but a rule of discretion. Though 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 has to 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)
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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.
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> 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)

16. Therefore, it is noticed by this Court that though alternate remedy is a rule of discretion, when it comes to fiscal laws, alternate remedy has to be applied with utmost rigour as laid down by Hon'ble Supreme Court in Satyawati Tondon case and reiterated in K.C.Mathew case.

17. Therefore, it is open to writ petitioner to file a statutory appeal under Section 51 of TNVAT Act to the jurisdictional Appellate Deputy Commissioner. If the writ petitioner chooses to do so, though obvious, it is made clear that conditions of pre-deposit and other conditions for appeal will operate. Besides this, if there is any delay in filing the statutory appeal, it is open to the writ petitioner to seek condonation of delay as well as exclusion of time spent in the instant writ petition by taking recourse to Section 14 of Limitation Act. If the writ petitioner adopts such a recourse, prayers for condonation of delay and exclusion of time spent in the instant writ petition by applying Section 14 of Limitation Act, shall be dealt with and decided by the Appellate Authority on their own merits and in accordance with law.

18. Instant writ petition is dismissed, albeit, preserving the rights of the writ petitioner to avail alternate remedy if the 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. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

vsm

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Commercial Tax Officer
Nagapattinam Assessment Circle
Commercial Taxes Buildings
Court Campus, Veliyapalayam
Nagapattinam.

+1cc to the Spl.Govt.Pleader,(Taxes), Vide Sr.No.63007
+1cc to Mr.K.Kulandaivelu, Advocate, SR.No.62542

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Kak(10/09/2019)