IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 03.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.Nos.18672 & 18675 of 2019
and
W.M.P.Nos.18013 & 18020 of 2019

Hytek Industries
Represented by its Authorized Signatory
D.K.Goyal .. Petitioner in both W.Ps.

Vs.

Assistant Commissioner (CT)
Korattur Assessment Circle
No.52/98, Yadhaval Street
Padi, Chennai - 600 050. .. Respondent in both W.Ps.

Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the respondent passed in TIN/33981443349/2010-11 and CST/1009096/2010-11 respectively dated 18.04.2018 and quash the same and further direct the respondent to complete the assessment in accordance with the law or issue any other writ or pass such further or other order as may deem fit and proper in the circumstances of the case and render justice.

For Petitioner : Mr.N.Murali
(In both W.Ps)

For Respondents : Mr.V.Haribabu,
(In both W.Ps) Additional Government Pleader

COMMON ORDER

Mr.N.Murali, learned counsel on record for sole writ petitioner in both these writ petitions is before this Court. Mr.V.Haribabu, learned 'Additional Government Pleader' ('AGP' for brevity) accepts notice on behalf of the lone official respondent in both these writ petitions.

2. With consent of learned counsel on both sides, main writ petitions itself are taken up and are being disposed of.

3. This is a second round of litigation arising under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)' ('TNVAT Act' for brevity) and 'Central Sales Tax Act, 1956' ('CST Act' for brevity).

4. To be noted, a revised assessment order dated 18.04.2019 bearing Reference No.TIN/33981443349/2010-11 is the impugned order in W.P.No.18672 of 2019 and an order dated 18.04.2019 bearing reference No.CST/1009096/2010-11 is the impugned order in W.P.No.18675 of 2019. This Court is informed that the impugned order in the second writ petition under CST Act is consequential to the impugned order in the first writ petition under TNVAT Act. This Court is also informed that both the writ petitions arise out of a common factual matrix.

5. Writ petitioner is a dealer inter alia under TNVAT Act and there was self assessment i.e., monthly returns being filed under Section 21 of TNVAT Act and there was deemed assessment under Section 22(2) of TNVAT Act.

6. Under such circumstances, respondent passed revised assessment order dated 07.10.2016 under Section 22(4) of TNVAT Act adopting best judgment method. This 07.10.2016 revised assessment order was called in question by writ petitioner by way of an earlier writ petition in this Court being W.P.No.41328 of 2016, which came to be disposed of by a Hon'ble Single Judge of this Court on 05.01.2017. In that order dated 05.01.2017, the revised assessment order was set aside and there was a direction to re-do the assessment. To be noted, this order was passed, solely on the ground that the respondent had not exhausted all avenues for effecting service on writ petitioner though they had writ petitioner's local address as well as Dehli address.

7. Post aforesaid order of this Court in the earlier writ petition i.e., pursuant to the aforesaid order in the earlier writ petition, revised assessment order was redone and the same culminated in the impugned order under TNVAT Act, which is impugned order in W.P.No.18672 of 2019.

8. As already alluded to supra, impugned order under CST Act in W.P.No.18675 of 2019 is only a consequential order. Therefore, challenge to the impugned order in the first writ petition is being dealt with and the verdict in the same will apply to the impugned order in the second writ petition under CST Act.

9. Learned counsel for writ petitioner, assailed the impugned order under TNVAT Act (impugned order in W.P.No.18672 of 2019) on two main grounds. First ground is that respondent sent a notice dated 28.04.2017, setting out the proposal and calling for objections. To this, writ petitioner sent a reply dated 26.05.2017, enclosing certain documents under eight different heads, which were required to be submitted vide 28.04.2017 notice. It was writ petitioner's specific case that with regard to serial Nos.1 to 3, documents were produced and with regard to serial Nos.4 to 8, it was submitted that for the purpose of claiming 'Input Tax Credit' ('ITC' for brevity) under TNVAT Act, those documents are not required. In this regard, reliance was placed on Section 19(1) of TNVAT Act and Rule 10(2) of TNVAT Rules 2007.

10. According to learned counsel for writ petitioner, respondent has completely lost sight of the fact that delivery being proved aspect will not arise as the assessment order in the present case is 2010-11, whereas amendment to Section 19 of TNVAT Act kicked in only on 29.01.2016.

11. The second point, on which the impugned order was assailed, is that personal hearing was not granted. In this regard, a circular being a Circular No.7 of 2014, dated 03.02.2014, issued by the office of the Principal Secretary and Commissioner of Commercial Taxes was referred to.

12. With regard to first point, learned Revenue Counsel drew the attention of this Court to Section 81 of TNVAT Act and submitted that respondent does have power to seek production of documents and therefore, there was nothing erroneous in the respondent calling for documents under various heads.

13. This Court has carefully considered the rival submissions on the first point.

14. This Court is left with the considered view that this may at best qualify as a ground for appeal for the writ petitioner and does not call for interference in the exercise of writ jurisdiction.

15. This takes us to the second point on which impugned order is assailed viz., personal hearing.

16. A perusal of the impugned order reveals that personal hearing has been granted and that the opportunity has not been utilised by writ petitioner. This is articulated specifically in the impugned order and the relevant portion of the impugned order reads as follows:

'Personal hearing was also offered in the notice for production of records as per orders of Honourable High Court of Madras. The dealer has not utilized the opportunity for production of original records. They have not maintained any stock register and not produced for verification.'

17. To be noted, Revenue Counsel points out that writ petitioner sent reply on 26.05.2017 and the impugned order came to be passed only on 18.04.2018, almost one year later. Therefore, it cannot be gainsaid by learned counsel for writ petitioner that personal hearing has not been granted. In this regard, an order made by this Court being order dated 19.06.2019 in W.P.No.16719 of 2019 etc., was pressed into service by writ petitioner. That order came to be passed on the facts and circumstances of that particular case and that case pertains to quantitative loss. It may be superfluous to reiterate the principle that a case is decided and a verdict is given based on the facts of that case and in the considered opinion of this Court, the facts of the two cases are completely different and therefore, it will not operate as a ratio.

18. More so, in the instant case there is a specific averment in the impugned order that personal hearing has been granted and the same has not been availed by writ petitioner.

19. This takes us to the alternate remedy aspect.

20. There is no disputation or disagreement before this Court that writ petitioner has an alternate remedy by way of an appeal to the jurisdictional Deputy Commissioner under Section 51 of TNVAT Act.

21. Alternate remedy, no doubt, is not a rule of compulsion, but it is a rule of discretion. Though it is a rule of discretion, Hon'ble Supreme Court, has held that this rule of discretion i.e., alternate remedy rule has to be applied with utmost rigour when it comes to matters pertaining to Taxes, CESS, Revenue etc., This principle was laid down in Satyawati Tandon Case [United Bank of India Vs. Satyawati Tondon and others reported in (2010) 8 SCC 110]. 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)

"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.'

(Underlining made by Court to supply emphasis and highlight)

22. In the instant case, there is no disputation or disagreement that there is alternate remedy and it is nobody's case that it is not efficacious or ineffective. In other words, it is nobody's case that alternate remedy is ineffectual or not efficacious. Therefore, this Court is of the considered view that this is a fit case to relegate the writ petitioner to alternate remedy. This Court has also reminded itself that this is the second round of litigation at the original authority stage itself.

23. Be that as it may, appellate authority under Section 51 of TNVAT Act is also an authority which can deal with facts and therefore, all questions that are raised by writ petitioner in the instant cases are left open for writ petitioner to be raised before the appellate Authority and the Appellate Authority can examine the matter on facts and on the merits of the grounds raised therein. To be noted, this is in the light of the language in which the appeal provision i.e., Section 51 of TNVAT Act is couched.

24. With regard to time frame for filing appeal, if there is any delay, 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 relying on Section Section 14 of Limitation Act. If the writ petitioner makes such pleas/prayers for condonation of delay and/or exclusion of time spent in the instant writ petition by placing reliance on Section 14 of Limitation Act, such pleas/prayers of writ petitioner shall be dealt with by the Appellate Authority on their own merits.

25. Writ petitions fail and the same are dismissed, albeit, preserving the rights of writ petitioner to avail the alternate remedy in the manner set out supra in this order. There shall be no order as to costs,. Consequently, connected miscellaneous petitions are closed.

26. At this juncture, learned counsel for writ petitioner requested for return of the original impugned orders, so as to enable the writ petitioner to prefer alternate remedy of statutory appeal. Registry is directed to return the original impugned orders in both these writ petitions to the counsel on record for writ petitioner under due acknowledgement.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//
Sub Assistant Registrar

vsm

To

1.Assistant Commissioner (CT)
Korattur Assessment Circle
No.52/98, Yadhaval Street
Padi,
Chennai - 600 050.

2.The Section Officer,
E.R.Section,
High Court, Madras

+2ccs to Mr.N.Murali, Advocate, S.R.No.56199
+1cc to the Spl.Government Pleader (Tax), S.R.No.56137

W.P.Nos.18672 & 18675 of 2019 and
W.M.P.Nos.18013 & 18020 of 2019

RSI(CO)

RRS(13/08/2019)