IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 02.07.2019

CORAM
THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.18768 of 2019
&
W.M.P.No.18113 of 2019

M/s.L.G.Balakrishnan & Brothers Ltd.,
Rep. By its Chief Financial Officer
Mr.N.Rengaraj
6/16/13, Krishnarayapuram Road
Ganapathy
Coimbatore - 641 006 .. Petitioner

Vs.

The Deputy Commissioner (ST)(FAC)
Divisional Large Payers Unit
Coimbatore .. Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of the respondent in TIN 33501880016/2013-14 and quash the order dated 29.05.2019 passed therein.

For Petitioner : Ms.Hema Muralikrishnan

For Respondent : Ms.G.Dhanamadhri
Government Advocate

O R D E R

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

2.With consent of learned counsel on both sides, the main writ petition itself is taken up, heard out and is being disposed of.
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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.It is not in dispute that the writ petitioner before this Court is a dealer under TNVAT Act.

5. This Court is also informed that writ petitioner was filing monthly returns under Section 21 of TNVAT Act and there was deemed assessment under Section 22(2) of TNVAT Act.

6. Under such circumstances, the business premises of the writ petitioner was inspected by officials of the Enforcement Wing i.e., jurisdictional Enforcement Wing during the period 31.05.2016 to 16.08.2016. The Enforcement Wing officers verified the accounts maintained by the writ petitioner and during the course of inspection pointed out certain defects. Thereafter, a notice was issued to the writ petitioner on 12.11.2018 mentioning about the inspection by the Enforcement Wing and calling for objections. To this, writ petitioner submitted a reply dated 26.02.2019. After the reply, there is no disputation that there was a personal hearing and in the personal hearing the writ petitioner was shown all details pertaining to TNVAT site in the system. This is clearly articulated in the impugned order and it mentions that the dealer saw all the above defective aspects. The relevant paragraph in the impugned order which articulates this reads as follows:

> 'The dealer were shown all the above details in the TNVAT site in the system. The dealers saw all the above defective aspects in the website because of which the ineligibility of ITC has arised.'

7. The aforesaid trajectory or proceedings is not disputed. In other words, There is no disputation or disagreement with regard to the aforesaid trajectory.

8. However, what the learned counsel for writ petitioner would contend is that all the purchases made by the writ petitioner under TNVAT Act i.e., Annexure- I of the writ petitioner under TNVAT have been filed along with the reply and the impugned order proceeds on the basis that the numerical values in these invoices and the writ petitioner's sellers' Annexure - II do not match.

9. Be that as it may, it is also noticed that with regard to the proposal for which objections were called for, the proposal was to tax at a turn over of Rs.14,09,57,486/- and the tax due is Rs.93,72,607/-. To be noted, this is for Assessment Year 2013-2014. However after the aforesaid exercise of site being demonstrated to the dealer wherein the defective aspects in the website were noticed, the tax due was dropped from Rs.93,72,607/- to Rs.80,95,887/-.

10. Therefore in the considered opinion of this Court what comes out clearly is that there has been an exercise that has been carried out by the respondent in the course of passing the impugned order. That exercise is showing the TNVAT site in the system to the dealer wherein all the defective aspects of the website which are relatable to the eligibility qua 'Input Tax Credit' ('ITC' for brevity) were highlighted. Thereafter, it also comes out clearly that the Assessing Officer has applied his mind and it is only because of this that the proposal of Rs.93,72,607/- has been dropped to Rs.80,95,887/-.

11. It is submitted by learned counsel for writ petitioner that drop from Rs.93,72,607/- to Rs.80,95,887/- is not because of mismatch qua numerical values, but because certain supplies have been repeated and have been shown more than once. This turns heavily on facts. Therefore, this Court sitting in writ jurisdiction cannot go into those aspects. This should best be enquired into by the Appellate Authority more so as it turns on facts. However, this question is left open to be agitated before the Appellate Authority.

12. In the aforesaid backdrop, learned counsel for writ petitioner drew the attention of this Court to JKM Graphics Solution principle being the principle laid down by this Court in M/s.JKM Graphics Solutions Private Limited Vs.The Commercial Tax Officer, Vepery Assessment Circle, Chennai-6 reported in (2017) 99 VST 343

13. It is the submission of learned counsel for writ petitioner that if there is a mismatch, the Assessing Officer should have proceeded against the sellers from whom the writ petitioner has purchased and should not have mulcted the writ petitioner with tax.

14. There is also no disputation that the invoices match, but it is the numerical values which did not match.

15. Learned Revenue counsel adverting to the aforesaid aspects of the impugned order particularly paragraph extracted and reproduced supra and the aspect of proposed tax of Rs.93.72 lakhs being dropped to Rs.80.85 submits that the Assessing Officer has applied his mind, has gone through the exercise of comparing the supporting documents filed by the writ petitioner along with the reply and has embarked upon the exercise of enquiring into the mismatch and therefore JKM Graphics principle does not come to the aid of the writ petitioner in the instant case.

16. There is no difficulty in accepting the submission that the impugned order has been passed after the exercise of comparison qua mismatch. Even with regard to numerical values,

if there is any issue for the writ petitioner and if the writ petitioner is aggrieved and if it is the writ petitioner's case that exercise done by the Assessing Officer in passing the Assessment Order was not satisfactory, it may only be a fit case for appeal. In other words, this Court is of the considered view that these are all grounds which have to be raised in a statutory appeal. There is no disputation or disagreement before this Court that a statutory appeal is available to the writ petitioner under Section 51 of TNVAT Act.

17. Before adverting to the statutory appeal and alternate remedy, in the light of the narrative thus far, this Court is of the considered view that in the instant case, considering the facts and circumstances of this case, this Court is unable to persuade itself to believe that there is violation of JKM Graphics Solution principle.

18. 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 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 when it comes to matters relating to taxes, cess etc., i.e, fiscal laws, it has to be applied with utmost rigour. Satyawati Tandon Case has been subsequently reiterated in the recent 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 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.'

19. Therefore, this Court is unable to persuade itself to believe (in the light of narrative thus far) that there is any violation to JKM Graphics Solution principle as alleged. This Court deems it appropriate to relegate the writ petitioner to the alternate remedy of an appeal under Section 51 of TNVAT Act. As this Court is relegating the writ petitioner to alternate remedy, all questions raised including the questions raised in the instant writ petition are left open to be raised before the Appellate Authority . If there is any delay in filing the appeal, it is for the writ petitioner to seek condonation of delay or exclusion of time spent in this writ petition by placing reliance on Section 14 of Limitation Act. It is for the Appellate Authority to decide the same on its own merits.

Reserving the rights of the writ petitioner with regard to appellate remedy, this writ petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(C/L)

//True Copy//

Sub Assistant Registrar

gpa

To

The Deputy Commissioner (ST)(FAC)
Divisional Large Payers Unit
Coimbatore.

+1cc to Mr.B.Raveendran, Advocate, S.R.No.55188
+1cc to the Government Pleader, S.R.No.55478

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NRL(CO)

RRS(08/08/2019)