IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.NO.19213 OF 2019
&
W.M.P.NO.18646 OF 2019

Tvl. Ramesh Motors
Rep. By its Propreitor Mr.B.Karthick
No.244, Anna Salai
Baluchetty Chatram
Kancheepuram
.. Petitioner

vs.

The State Tax Officer
Kancheepuram Assessment circle
C.T.Building, Collector Office Complex
Kancheepuram
.. Respondent

Prayer:
Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records on the files of the respondent TIN/33481644026/2015-16 dated 16.05.2019 and quash the same being illegal, invalid without jurisdiction and violated the principles of natural justice and contrary to law.

For Petitioner : Mr.D.Vijayakumar

For Respondent : Mr.V.Haribabu
Additional Government Pleader

ORDER

Mr.D.Vijaya Kumar, learned counsel on record for sole writ petitioner is before this Court. Mr.V.Haribabu, learned Additional Government Pleader accepts notice on behalf of the lone respondent.

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 the instant writ petition arises under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)', hereinafter 'TNVAT Act' for brevity.

4.It is not in dispute that writ petitioner is a dealer under TNVAT Act.

5.A revised Assessment Order made by the lone respondent being an order dated 16.05.2019, hereinafter 'impugned order' for the sake of brevity has been called in question in the instant writ petition. To be noted, this is second round of litigation though the earlier round was not in this Court.

6. Subject matter of instant writ petition pertains to Assessment Year 2015-16, which shall hereinafter be referred to as 'said AY'. With regard to said AY, respondent originally passed an order of revised assessment on 14.09.2018. This was carried in appeal by the writ petitioner by way of a statutory appeal in A.P.No.241 of 2018. This Court is informed that the statutory appeal was filed under Section 51 of TNVAT Act and the Appellate Authority is the jurisdictional Appellate Deputy Commissioner. After hearing out the appeal, Appellate Authority disposed of the appeal on 31.12.2018 remitting the matter back to the respondent with certain directions. These directions are contained in certain specific paragraphs in the order of the Appellate Authority and learned counsel for writ petitioner drew the attention of this Court to those paragraphs which read as follows:

> 'The burden of proof in this case lies on the assessing officer. The assessing officer has to furnish a details of all purchase invoice and then only put the dealers to notice and take action as per the provisions of the TNVAT Act, 2006. Without furnishing the details of the invoice, merely quantifying the turnover based on the departmental web site report shall not amount to exhausting the burden of proof, casted upon the assessing officer.'
>
> ''Since the penalty of Rs.3,63,912/- under Section 22(5) has been levied at 150% on the tax levied on the sale value arrived based on the local purchase omission of the appellants, the penalty imposed under Section 22(5) of the TNVAT Act, 2006 is set aside and the appeal filed by the appellants in respect of penalty is also remanded back to the assessing officer, to issue a notice call for objections and after affording an opportunity of being

heard in person pass order as per the provisions of the TNVAT Act 2006 as the appeal in respect of the tax itself has been already remanded.'

7. It is the specific and pointed case of the learned counsel for writ petitioner that these directions of the Appellate Authority have not been adhered to.

8. In response to the above said submission, learned Revenue counsel pointed out that post order Appellate Authority, a notice dated 16.04.2019 was issued by the respondent to the writ petitioner and most relevant portion in this regard (as articulated in impugned order) is as follows:

> ' Accordingly the purchase details during the year 2015-16 is send herewith as directed by the Appellate Deputy Commissioner (ST), Chennai (South) Division, Chennai.'

9. It was also pointed out that there is a seven page enclosure to this notice, which contains details of invoices. There is no dispute about this notice and enclosures.

10. After the aforesaid notice, it is also not in dispute that a personal hearing was granted, that there was a personal hearing is articulated in the impugned order and the relevant paragraph reads as follows:

> ' As directed in the Appellate Deputy Commissioner (ST)'s Chennai (South) Order, a personal hearing notice was issued to the dealer along with the details of the purchase invoice, which was taken through department website during the year. But the dealer did not file any objections so far, even though the notice time has already been expired.

11. Though not projected in the argument, this Court also noticed that an order dated 07.06.2019 made by this Court in W.P.No.7961 of 2019 has been annexed to the typed-set of papers. A perusal of this order reveals that this order pertains to JKM principle [M/s.JKM Graphics Solutions Private Limited Vs. The Commercial Tax Officer, Vepery Assessment Circle, Chennai-6]. To be noted, JKM principle is based on a order of this Court in W.P.No.105 of 2016 made in a batch of writ petitions being order dated 01.03.2017.

12. Adverting to the notice from the respondent being notice dated 16.04.2019 with enclosures running to as many as 7 pages and relevant paragraphs in the impugned order which have been adverted to supra, learned Revenue counsel contended that neither the directions of the Appellate Authority nor the JKM principle has been violated in the instant case.

13. This Court has carefully considered the submissions made on both sides.

14. The aforesaid notice dated 16.04.2019 with enclosures running to as many as 7 pages and a personal hearing having been given by the sole respondent wherein the dealer who had been given the details of the purchase invoices, was taken through the departmental website pertaining to the relevant year. However, after being taken through the departmental website, the dealer did not file any objections. Therefore, this Court is convinced that directions of the Appellate Authority and JKM principle have not been violated in the instant case. In JKM principle factually the dealer was not given the opportunity of going through the website and the dealer was not provided with copies of invoices. Therefore, grievance of the writ petitioner turns on merits of the matter and it can at best qualify as errors, (if at all), in the impugned order in carrying out this exercise. These can therefore only be grounds for appeal and not for interference in writ jurisdiction. Interference in writ jurisdiction notwithstanding alternate remedy is a rule of discretion. It is also a self-imposed restraint. In other words it is not a rule of compulsion. Though alternate remedy rule is a rule of discretion and not a rule of compulsion 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 with regard to cases pertaining to taxes, cess etc., i.e., fiscal laws in general, alternate remedy rule has to be applied with utmost rigour. To be noted, 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 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.'

(Underlining made by Court to supply emphasis and highlight)

15. In the light of the narrative supra, this Court is convinced that this is a fit case to relegate the writ petitioner to avail alternate remedy by filing a statutory appeal under Section 51 of TNVAT Act. If the writ petitioner chooses to avail the alternate remedy and files a statutory appeal, as the writ petitioner has already paid 25% of the tax liability for preferring the earlier appeal being A.P.No.241 of 2018, which was disposed of on 31.12.2018, appeal that may be filed now shall be entertained by the Appellate Authority (subject of course to limitation and delay condonation if that be the scenario) without insisting on any payment of 25% of tax liability all over again. Though obvious, for the purpose of clarity, it is set out that if there is delay in filing statutory appeal and if condonation is sought same shall be dealt with by Appellate Authority on its own merits and if appeal is heard out all questions are left open (including those

raised in instant writ petition). In other words, Appellate Authority shall decide the appeal, uninfluenced by and untrammelled by any view/s expressed in instant order as they are for the limited purpose of disposing of instant writ petition.

With the above observation, instant writ petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gpa

Copy To

+1cc to Mr.D.Vijayakumar, Advocate, S.R.No.57810
+1cc to the Special Government Pleader, S.R.No.59388

W.P.No.19213 of 2019 &
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JP(CO)
CS/22/08/2019