IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 25.07.2019

CORAM
THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.21852 of 2019
and
W.M.P.No.21070 of 2019

M/s.Touch Stone Infrastructure
and Solutions Pvt. Ltd.
Rep. by its Director
P.Vinoth Kumar .. Petitioner

Vs.

The Commercial Tax Officer
J.J.Nagar Assessment Circle
Thirumangalam
Chennai - 600 040. .. Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records pertaining to the impugned order vide TIN/33031464290/2015-16 dated 22.03.2019 on the file of the respondent and quash the same as illegal and unconstitutional.

For Petitioner : Mr.K.M.Malar Mannan

For Respondent : Ms.G.Dhanamadhri
Government Advocate

ORDER

Mr.K.M.Malar Mannan, learned counsel on record for writ petitioner and Ms.G.Dhanamadhiri, learned Government Advocate, who accepts notice on behalf of the lone official respondent are 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. Main 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. Short facts shorn of elaboration are that writ petitioner is a dealer under TNVAT Act, the lone respondent, who is the assessing authority found certain discrepancies between

the audited report in the prescribed Form viz., Form WW regarding Tax Deduction at Source payment details and the returns filed by writ petitioner, that sole respondent issued a 'revisional notice' (described as 'show cause notice') dated 15.12.2017, that writ petitioner sent a reply to the revisional notice, being reply dated 15.03.2018, that after considering reply to the revisional notice, respondent passed a 'revised Assessment order, dated 22.03.2019 under Section 27 of TNVAT Act bearing Reference No.TIN/33031464290/2015-16' (hereinafter 'impugned Assessment Order' for brevity) and that the impugned assessment order has been called in question in the instant writ petition.

5. Assailing the impugned Assessment Order, learned counsel for writ petitioner submitted that opportunity has not been granted to writ petitioner, though penalty has been imposed. To be noted, a perusal of the impugned order reveals that there were as many as six heads under which revisional assessment was taken up, five heads were dropped or held in favour of writ petitioner and with regard to one head pertaining to direct expenses for interior works alone, revised assessment has been made against writ petitioner. Be that as it may, a perusal of the impugned Assessment Order reveals that penalty has been levied under Section 27(1) of TNVAT Act.

6. Learned Revenue Counsel very fairly submits that wrong provisions of law has been quoted and the penalty is under Section 27(3) of TNVAT Act. To support this contention, learned Revenue Counsel took this Court through the aforementioned revisional notice dated 16.02.2018, wherein respondent has mentioned that penalty is proposed to be imposed under Section 27(3) of TNVAT Act. Relevant paragraph in the revisional assessment notice reads as follows:

> '3. In view of the above discrepancies, it is proposed to assess them to the best of judgment under Section 27(1) of the Act with penalty under Section 27(3) of the Act.'

7. Therefore, with regard to imposition of penalty qua the impugned Assessment Order, wrong provision of law has been quoted, but there is no disputation that respondent has powers to impose penalty.

8. This takes us to the opportunity aspect.

9. As already alluded to supra, revisional notice clearly mentions about the proposal to impose penalty i.e., revisional notice dated 16.02.2018 and writ petitioner dealer also in the reply dated 15.03.2018 has put forth their stand with regard to proposal in the revisional notice.

10. Furthermore, this is a case where respondent has noticed discrepancies between two returns both filed by writ petitioner dealer. While one is the usual monthly returns, the other is audited report in the prescribed Form viz., Form WW, both of which have been filed by writ petitioner.

11. In the light of the revisional notice dated 16.02.2018 and reply to the same dated 15.03.20118, it cannot be gainsaid that writ petitioner has not been given an opportunity, as the revisional notice specifically mentions about proposal to impose penalty under Section 27(3) of TNVAT Act.

12. In the aforesaid scenario, it is not as if writ petitioner is left without any remedy.

13. There is no disputation or disagreement that remedy is available to writ petitioner by way of an appeal before the jurisdictional appellate Deputy Commissioner. This is mentioned in the impugned revisied assessment order itself. Be that as it may, this Court is informed that the statutory appeal is under Section 51 of TNVAT Act.

14. 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.

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. It is open to the writ petitioner to prefer a statutory appeal subject of course to the conditions for pre-deposit as well as the time frame for the appeal prescribed therein. Power to condone delay is vested in statutory appellate authority by the statute and therefore, if writ petitioner seeks condonation of delay, the same shall be dealt with by the statutory authority on its own merits and subject to the provisions of law including cap qua limitation under Section 51 of TNVAT Act. This Court deems it appropriate to mention this with clarity and specificity, as it is submitted that the impugned Assessment Order is dated 22.03.2019 and the same was served on the writ petitioner on 15.04.2019, but writ petitioner has chosen to present the instant writ petition only on 22.07.2019.

16. Owing to the narrative thus far, this Court finds no reason to interfere with the impugned Assessment Order.

17. Writ petition is dismissed, albeit, preserving the rights of writ petitioner to file statutory appeal subject of course to conditions of pre-deposit and limitation as mentioned supra. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//
Sub Assistant Registrar

vsm

To

The Commercial Tax Officer
J.J.Nagar Assessment Circle
Thirumangalam
Chennai - 600 040.

+1cc to Mr.K.M.Malarmannan, Advocate, S.R.No.64185
+1cc to the Government Pleader(Taxes), S.R.No.64271

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RRS(21/08/2019)