IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.23350 of 2019
and
WMP No.23097 of 2019

M/s.Arima Constructions Private Limited
Represented by Mr.S.R.Arvind Kumar
Managing Director
17-A, S.N.R.College Road
Nava India, Coimbatore. .. Petitioner

-Vs-

The Assistant Commissioner (ST)
Mettupalayam Road Assessment Circle
Coimbatore. ... 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 in TIN:33862061790/2015-16 dated 24.06.2019 and quash the same as being violative of principles of natural justice and hence invalid and illegal and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case and render justice.

For Petitioner : Mr.V.Srikanth

For Respondent : Mr.V.Haribabu,
Additional Government Pleader

O R D E R

Mr.V.Srikanth, learned counsel on record for writ petitioner and Mr.V.Haribabu, learned Additional Government Pleader, who accepts notice on behalf of the sole 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. 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 brevity, clarity and convenience.

4. A revised assessment order passed by the sole respondent under Section 27(1) of TNVAT Act being an order 'dated 24.06.2019, bearing Reference No.TIN:33862061790/2015-16' (hereinafter ' impugned order' for brevity) has been called in question.

5. Proviso to Section 27(1) of TNVAT Act mandates that respondent should give a reasonable opportunity to the writ petitioner to show cause against the impugned order. In the instant case, there is no disputation that reasonable opportunity has been given to the writ petitioner to show cause qua the impugned order as the respondent issued a 'show cause notice dated 24.12.2018' ('SCN' for brevity) and writ petitioner sent a reply dated 07.01.2019. Thereafter respondent sent a further notice calling for certain records and the writ petitioner responded vide a letter dated 26.02.2019 and sent records which were sought for. Thereafter also there was one more notice dated 30.05.2019 from the respondent seeking certain explanation regarding 26.02.2019 reply. This 30.05.2019 notice also was responded to by the writ petitioner vide a communication dated 06.06.2019 giving the explanations that were sought for. Therefore, it is clear that more than adequate opportunities or in other words, more than reasonable opportunity has been given to the writ petitioner to show cause before the impugned order was passed by the respondent.

6. Under the aforesaid circumstances, notwithstanding several averments made in the affidavit filed in support of the writ petition notwithstanding several contentions raised/grounds urged in the affidavit filed in support of the writ petition, learned counsel for writ petitioner, focused his submissions on one pivotal point and the one pivotal point is that the respondent has extracted the objections and response of the writ petitioner extensively in the impugned order, but the same has not been dealt with point by point and the same has not been dealt with satisfactorily. In other words, it is the specific case of learned counsel for writ petitioner that the objections and the response of the writ petitioner have been dealt with in a summary manner in one paragraph and thereafter, respondent has come to the conclusion that reply of the dealer is not acceptable.

7. To be noted, though more than one case law has been filed as part of the typed set of papers which forms part of the case file, but learned counsel for writ petitioner pressed into service only one case law viz., Amutha Metals vs. Commercial Tax

Officer, Mannady (East) reported in [2007] 9 VST 478 (Mad) made by a Hon'ble Single Judge of this Court.

8. Adverting to paragraph 6 of the said order of Hon'ble Single Judge, learned counsel submitted that the respondent is expected to consider the objections and either accept or reject the same by giving valid reasons and by applying his mind.

9. A careful perusal of the Amutha Metals case reveals that it does not turn on the alternate remedy plea.

10. This now takes us to the stand of the learned Revenue Counsel. Learned Revenue Counsel, who has accepted notice on behalf of the sole respondent points out that writ petitioner has an effective and efficacious alternate remedy by way of an appeal to the 'jurisdictional Appellate Deputy Commissioner' (hereinafter 'said Appellate Authority' for brevity) under Section 51 of TNVAT Act.

11. Therefore, this matter now turns on the alternate remedy aspect which Amutha Metals does not deal with. Therefore, this Court accepts the submission of learned Revenue counsel that Amutha Metals is distinguishable. With regard to the alternate remedy aspect, there can be no disputation that the rule of alternate remedy and exercise of writ jurisdiction on the teeth of alternate remedy is clearly a self imposed restraint by Courts exercising writ jurisdiction. In other words, it is not a rule of compulsion and it is only a rule of discretion. Though it is a rule of discretion, with regard to fiscal law, the rigour is more. This Court reminds itself of the ratio of Hon'ble Supreme Court in Dunlop India case [Assistant Collector of Central Excise, Chandan Nagar, West Bengal vs. Dunlop India Ltd. and ors.] reported in (1985) 1 SCC 260 and the relevant paragraph is Paragraph 3 and the same reads as follows:

> '3. ..... Article 226 is not meant to short circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it, that recourse may be had to Article 226 of the constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under

Article 226 of the constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. This practice needs to be strongly discouraged.'

(underlining made by this Court to supply

emphasis and highlight)

12. Thereafter, almost after quarter of a century, Hon'ble Supreme Court in Satyawati Tandon Case [United Bank of India Vs. Satyawati Tondon and others reported in (2010) 8 SCC 110], held that when it comes to cases pertaining to tax, cess etc., rule of alternate remedy should be applied with utmost rigour.

13. This Satyawati Tandon principle was subsequently 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] and the 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)

14. It is seen from the impugned order that it is dated 24.06.2019. This Court is informed by learned counsel for writ petitioner that it was served on the writ petitioner on 27.06.2019. Statutory appeal under Section 51 of TNVAT Act should be filed within 30 days and therefore, it should have been filed by 26.07.2019. However, there is a provision for condonation of delay by the said Appellate Authority albeit subject to a cap of 30 days. As of today, writ petitioner is still within that 30 days cap and therefore, the delay is condonable. Besides this, this Court also notices that this writ petition has been presented in this Court on 25.07.2019. Therefore, when writ petitioner goes before the said Appellate Authority (if the writ petitioner chooses to do so,) the period spent in the instant writ petition i.e., period from 25.07.2019 to the date on which the copy of the order is made available shall stand excluded. This is done as a scenario may emerge where the writ petitioner may not even have to seek condation of delay. However, this Court based on the principles adumbrated in Section 14 of Limitation Act excludes the period from 25.07.2019 to the date on which copy of instant order is made available to the writ petitioner for the purpose of enabling the writ petitioner to avail alternate remedy by way of statutory appeal before said Appellate Authority.

15. Notwithstanding this exclusion, if it becomes necessary for the writ petitioner to seek condonation of delay, but such an application for condonation delay shall be decided on its own merits by the said Appellate Authority. Though obvious it is made clear that if the writ petitioner chooses to avail the

alternate remedy of statutory appeal under Section 51 of TNVAT Act by going before the said Appellate Authority, all conditions for the statutory appeal including pre-deposit condition adumbrated in Section 51 of TNVAT Act will apply.

16. Writ Petition is dismissed, albeit, preserving the rights of the writ petitioner qua the alternate remedy i.e., statutory appeal. Though obvious, for the purpose of abundant clarity, it is set out that all questions are left open to be canvassed before the said appellate authority. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

vsm

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (ST)
Mettupalayam Road Assessment Circle
Coimbatore.

+1cc to the Special Govt.Pleader (Taxes) vide SR.No.68704
+1cc to Mr.V.Srikanth, Advocate, SR.No.67869

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Kak(27/09/2019)