IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 07.08.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.23128 of 2019
&
W.M.P.Nos.22833 and 22835 of 2019

M/s.SVS Enterprises
Rep. By its Proprietor - D Loganathan
No.25, Anjuman Street
Gudiyatham
Vellore District .. Petitioner

Vs.

The State Tax Officer
Gudiyatham (East) Circle
Gudiyatham
Vellore District .. Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the records of the Respondent in his impugned proceedings made in TIN No.33144244104/2009-2010 dated 29.03.2019 quash the same as the same is illegal and arbitrary.

For Petitioner : Mr.S.Rajasekar

For Respondent : Mr.V.Haribabu
Additional Government Pleader

O R D E R

Mr.S.Rajasekar, learned counsel on record for writ petitioner is before this Court. Mr.V.Haribabu, learned Additional Government Pleader, who accepts notice on behalf of sole respondent is also 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)', hereinafter ' TNVAT Act' for brevity.

4.Writ petitioner is a dealer under TNVAT Act. Writ petitioner was filing monthly returns under Section 21 of TNVAT Act and there was deemed assessment under Section 22(2) of TNVAT Act.

5.When things stood as above, a revised Assessment Order came to be passed by the respondent on 04.11.2015. Writ petitioner carried this revised Assessment Order in appeal by way of a statutory appeal under Section 51 of TNVAT Act to the jurisdictional Appellate Deputy Commissioner.

6.In the statutory appeal, there is no disputation that the writ petitioner complied with the statutory mandate of 25% pre-deposit. 'Jurisdictional Appellate Deputy Commissioner' (hereinafter 'said Appellate Authority' for brevity), heard out the appeal and disposed of the same by an order dated 16.06.2017. Suffice to say that said Appellate Authority vide an order dated 16.06.2017 (in the statutory appeal) remitted the matter back to the sole respondent before this Court i.e., Original Authority, to redo the revised assessment and gave some directions in this regard.

7. In the light of the order which this Court proposes to pass, this Court is of the considered view that it would not be appropriate to delve into those directions given by the said Appellate Authority. Suffice to say that post remand, lone respondent before this Court, namely the Original Authority has now passed a 'revised Assessment Order dated 29.03.2019 bearing reference TIN No.33144244104/2009-2010' (hereinafter 'impugned order' for brevity). Instant writ petition has been filed assailing the impugned order.

8. Notwithstanding very many grounds raised in the affidavit filed in support of the writ petition and notwithstanding very many averments/contentions in the affidavit filed in support of the writ petition, submissions before this Court was focused on one pivotal point and that one pivotal point is that in the impugned order, the respondent has not made the revised assessment in accordance with and in tune with the directions given by said Appellate Authority vide the aforesaid order dated 16.06.2017. A perusal of directions given by said Appellate Authority and the impugned order reveals that this plea turns largely on facts. Therefore, this Court is of the considered view that it would be appropriate to relegate the writ petitioner to alternate remedy and hold that it would be appropriate to hold that the writ petitioner can assail the impugned order by way of a statutory appeal before the said Appellate Authority.

9. To be noted, this Court is informed without disputation or disagreement that statutory appeal is under Section 51 of TNVAT Act. A perusal of Section 51 of TNVAT Act reveals that there is a pre-deposit / pre-condition requirement and that is 25% of the tax liability. From the trajectory of the instant matter, it comes out clearly that writ petitioner has already made the pre-deposit while preferring the first round of statutory appeal before the said Appellate Authority. More importantly, this Court is informed without any disputation or disagreement that besides 25% pre-deposit for preferring the first round of statutory appeal, writ petitioner has paid another 25% pursuant to orders in stay petition before the said Appellate Authority in the first round. This means that writ petitioner has already paid 50% of the revised tax which is now subject matter of disputation qua impugned order.

10. Considering the facts and circumstances of the instant case, nature of the grounds that are being canvassed, this Court deems it appropriate to relegate the writ petitioner to the alternate remedy of statutory appeal before the said Appellate Authority with a rider that 50% of the disputed tax already deposited/ paid by way of pre-deposit and pursuant to stay petition in the earlier round in statutory appeal will suffice and the writ petitioner shall now not be called upon to make further pre-deposit in this regard.

11. Before parting with this case, this Court deems it appropriate to mention about the obtaining position with regard to alternate remedy. Alternate remedy rule qua exercise of writ jurisdiction on the teeth of alternate remedy is no doubt a self-imposed restraint and therefore it is not an absolute rule. In other words, alternate remedy rule, is a rule of discretion and it is not a rule of compulsion. This Court reminds itself of 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 4 and the same reads as follows:

> '4. 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 Art. 226. The Court must also have good and sufficient reason to by- pass the alternative remedy provided by statute. Matters involving the revenue where statutory remedies are

available are not such matters. The vast majority of the petitions under Art. 226 are filed solely for the purpose of obtaining interim orders and thereafter to 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, 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 cases pertaining to tax, cess etc., rule of alternate remedy should be applied with utmost rigour. This Satyawati Tandon case was 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)

13. In the light of the narrative thus far, this Court passes the following order is passed:

a) Impugned order dated 29.03.2019 bearing reference TIN No.33144244104/2009-2010 is not interfered with, leaving it open to the writ petitioner to assail the same by way of a statutory appeal under Section 51 of TNVAT before Appellate Authority;

b) If the writ petitioner files a statutory appeal before aforesaid Appellate Authority, as writ petitioner has already made pre-deposit of 25% in the previous round of statutory appeal, writ petitioner shall not be called upon to make 25% pre-deposit again and Appellate Authority shall entertain the appeal without insisting on this pre-deposit.

c) As the writ petitioner has already paid another 25% i.e., 25% in addition to pre-deposit, adding upto 50% in all, impugned order will be kept in abeyance till the disposal of statutory appeal by the said Appellate Authority.

d) Said Appellate Authority, namely jurisdictional Appellate Deputy Commissioner shall dispose of the statutory appeal under Section 51 of TNVAT Act on its own merits and in accordance with law.

e) If the writ petitioner chooses to avail alternate remedy, statutory appeal shall be filed before the jurisdictional Appellate Deputy Commissioner within a fortnight from the date of receipt of a copy of this order, failing which aforesaid limb of direction in this order, directing impugned order to be kept in abeyance till disposal of statutory appeal by Appellate Authority will cease to operate without further reference to this Court.

This writ petition is disposed of with the above directions. There shall be no order as to costs,. Consequently, the connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

1.The State Tax Officer,
Gudiyatham (East) Circle
Gudiyatham,
Vellore District.

2.The Appellate Deputy Commissioner(CT),
Vellore.

3.The Deputy Commissioner (CCT),
Vellore.

+1cc to M/s.R.Hemalatha, Advocate Sr.57356
+1cc to the Special Government Pleader Sr.68179

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