IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 22.08.2019
Coram
THE HONOURABLE MR. JUSTICE M.SUNDAR
W.P.No.24329 of 2019
and
WMP Nos.24081 & 24083 of 2019

Tvl. Rabbani Electricals
Represented by its Partner
No.22 Tindivanam Road
Gingee.

... Petitioner

vs.

The State Tax Officer
Gingee.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent in Order of Assessment in TIN 33664740749/2016-17 dated 14.02.2018 and quash the same consequently direct the Respondent to pass fresh orders after adopting the findings laid down by this Hon'ble Court under identical circumstances and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of this case and thus render justice.

For Petitioner : Mr.K.M.Aasim Shehzad

For Respondent : Ms.G.Dhanamadhri,
Government Advocate.

O R D E R

Mr.K.M.Aasim Shehzad, learned counsel of M/s.BFS Legal (Law Firm) on behalf of writ petitioner and Ms.G.Dhanamadhri, learned Government Advocate, 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. Short facts shorn of elaboration are that writ petitioner is a dealer 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, that writ petitioner

was filing monthly returns under Section 21 of TNVAT Act, that there was deemed assessment under Section 22(2) of TNVAT Act, that there was surprise inspection, that in the surprise inspection what according to the Department is suppression was noticed, that a revisional notice was issued based on the surprise inspection, that writ petitioner dealer received the revisional notice and filed objection dated 05.12.2017, that after considering the objections, a 'revised assessment order dated 14.02.2018, bearing Reference No.TIN 33664740749/2016-17' (hereinafter 'impugned order' for brevity) came to be passed.

4. Though the impugned order does not mention the provision of law under which it has been made, this Court is informed at the hearing by learned Revenue Counsel that the impugned order has been made under Section 27(1)(a) of TNVAT Act. A perusal of contents of the impugned order also reveals that Section 27(1)(a) of TNVAT Act has been invoked as far as revision is concerned. Penalty is under Section 27(3)(c) of TNVAT Act. Therefore, there is no difficulty in accepting that this is a revised assessment under Section 27(1)(a) of TNVAT Act.

5. Notwithstanding very many averments made in the affidavit filed in the support of the instant writ petition, grounds urged and contentions canvassed, learned counsel for writ petitioner focused his submission in the hearing on the merits of the matter. Learned Revenue Counsel pointed out that writ petitioner has an alternate remedy by way of an appeal to the jurisdictional Appellate Deputy Commissioner under Section 51 of TNVAT Act.

6. There is nothing that was canvassed by learned counsel for writ petitioner to show that alternate remedy is ineffectual or not efficacious. It is not the writ petitioner's case that the order has been passed by the respondent without jurisdiction. From the narrative thus far, it is clear that there is no violation of 'principles of natural justice' ('NJP' for brevity) as an opportunity to show cause has been given vide revisional notice and the writ petitioner has also availed the same by filing objections on 05.12.2017. Therefore, this Court is convinced that respondent has complied with the mandate under proviso to Section 27(1)(a) of TNVAT Act i.e., the mandate of giving reasonable opportunity to show cause before making the impugned order.

7. In effect, it comes out clearly that this case does not fall under any of the exceptions qua alternate remedy.

8. With regard to rule of alternate remedy itself, it is no doubt a self imposed restraint qua Courts exercising

writ jurisdiction.

9. Though alternate remedy rule is a rule of discretion and not a rule of compulsion, Hon'ble supreme Court in a long line of authorities has repeatedly held that when it comes to matters pertaining to Taxes, CESS, Revenue etc., the rule of alternate remedy should be applied with utmost rigour.

10. 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 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)

11. 2 ½ decades later, i.e., 25 years later, in Satyawati Tandon Case [United Bank of India Vs. Satyawati Tondon and others reported in (2010) 8 SCC 110] the aforesaid principle was reiterated i.e., the principle that rule of alternate remedy though a rule of discretion should be applied with utmost rigour when it comes to fiscal statutes. 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], 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.'

(Underlining made by Court to supply emphasis and highlight)

12. In the aforesaid backdrop, learned counsel for writ petitioner submitted that he would pursue the alternate remedy. It is open to the writ petitioner to pursue the

alternate remedy subject to conditions adumbrated in Section 51 of TNVAT Act. If such a scenario unfurls, it is made clear that all questions on merits are left open.

13. Writ petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

To

The State Tax Officer
Gingee.

+1cc to M/S.BFS LEGAL, Advocate sr.106822(27/12/2019)

W.P.No.24329 of 2019
and WMP Nos.24081 & 24083 of 2019

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nr 14/10/2019