

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 6.12.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.A.No.4073 of 2019
and
C.M.P.No.25491 of 2019

State Bank of India Officers
Association (CC), SBOA,
rep. by its General Secretary
Mr.R.Balaji,
SBOA (CC) No.86, Fourth Floor,
Rajaji Salai, Chennai. :Appellant

Versus

The Assistant Commissioner (ST)
Muthialpet Assessment Circle,
No.199, 2nd Floor,
Thambu Chetty Street, Chennai. :Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 1.8.2019 in W.P.No.22634 of 2019 passed
by this court.

Prayer in W.P.No.22634 of 2019:
Writ Petition filed under Article 226 of the Constitution
of India praying for issuance of a writ of Certiorari of call
for the records in the proceedings in Order RC.No.1/2017,
A4/2016-17 dated 28.05.2019 issued by the respondent and quash
the same as arbitrary and illegal.

For Appellant : Mr.J.Prabakar
For Respondent : Ms.Dhanamadhri, Govt. Advocate

JUDGMENT

(Judgment of the court was made by Dr.VINEET KOTHARI, J.)

The present Writ Appeal has been filed by the Appellant
State Bank of India Officers Association (CC), SBOA, Chennai
aggrieved by the order dated 1.8.2019 passed by the learned
Single Judge dismissing the Writ Petition filed by the
Assessee/Appellant with the following observation:

"45. In the light of all that have been set out supra, this Court holds that there is no ground for interfering with the impugned order in the writ jurisdiction and therefore, this writ petition is dismissed but preserving the right of the writ petitioner to avail alternate remedy if the writ petitioner chooses to do so by filing an appeal to the jurisdictional Appellate Deputy Commissioner under Section 51 of TNVAT Act assailing the impugned order. Therefore, if the writ petitioner chooses to take recourse to alternate remedy, it is open to the writ petitioner to seek condonation of delay and such application for condonation of delay shall be dealt with by the Appellate Authority bearing in mind exclusion of time ordered by this Court supra in this order. Though obvious, it is made clear that all other conditions, formats and procedure adumbrated in TNVAT Act and TNVAT Rules for an appeal under section 51 of TNVAT Act including the pre-deposit condition will govern the writ petitioner, if the writ petitioner chooses to avail the statutory appeal. No costs. Consequently, connected Miscellaneous Petition is closed."

2. The learned Counsel for the Appellant/Assessee vehemently submitted that there was gross violation of principles of natural justice in passing the impugned order and there is a Circular issued by the Commissioner of Commercial Taxes, Chennai to grant opportunity of hearing, but still in breach of natural justice, the impugned order was passed and therefore the challenge made before the learned Single Judge could not have been rejected. In exercise of the alternative remedy, he also submitted that filing of Appeal before the first Appellate Authority requires pre-deposit and therefore, the Appeal remedy is onerous.

3. Having heard the learned counsel for the parties, we are of the clear and considered opinion that the order passed by the learned Single Judge relegating the Petitioner/Assessee to avail the regular remedy before the first Appellate Authority does not call for any interference by this court in the intra-court Appeal. The alleged grounds relating to breach of principles of natural justice by the Assessing Authority, the binding nature of the Commissioner's Circular are all possible grounds which the Appellant/ Assessee can very well raise before the Appellate Authority. The Rule regarding alternate remedy is well settled by a series of judgments of Constitutional Bench of Hon'ble Supreme Court viz., a writ petition can be maintained on an

appealable order only if

- (i) the vires and validity of the Act or Rule is under challenge;
- (ii) there is gross and glaring breach of principles of natural justice; and
- (iii) there is a patent lack of jurisdiction with the Authority, who passed an Order.

4. Merely because there are allegations of breach of principles of natural justice, all Writ Petitions against appealable orders cannot be entertained by this Court under Article 226/227 of the Constitution of India as the Statute has provided alternative and effective remedies to the Assessee aggrieved by the orders passed by the Assessing Authority and even if there is allegation of principles of natural justice, that can very well be raised before the Appellate Authority, who can also very well remand the case back to the Assessing Authority. If there are judgments to be cited on merits as well, those Judgments can be cited before the Appellate Authority, which can be considered by the Appellate Authority with regard applicability of the same to the facts of the case. But all these contentions are not sufficient to invoke the extraordinary writ jurisdiction in each and every case. It should be done rarely and exceptionally. The Rule of alternative remedy is always a Rule of Discretion for the Writ Court and not a Rule of Bar of jurisdiction.

5. Therefore, in our considered opinion, the learned Single Judge has not erred in relegating the Petitioner/Assessee to the first Appellate Authority under the statute. There is no merit in the present Writ Appeal and it is liable to be dismissed. Accordingly it is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (CS-III)

// True Copy//

Sub Assistant Registrar

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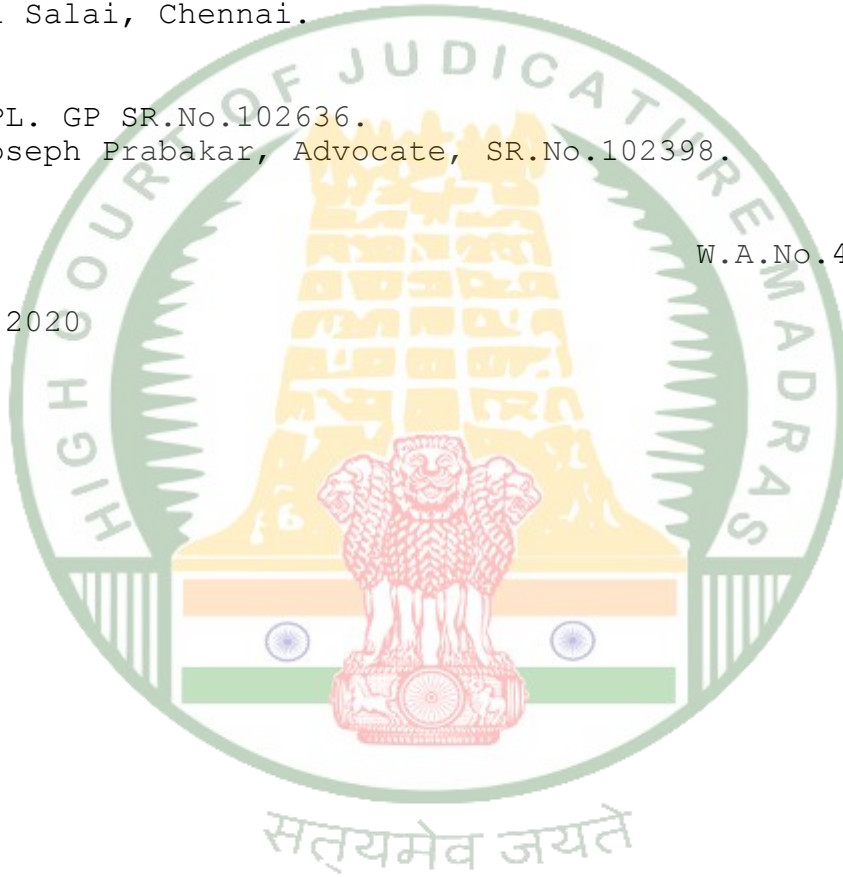
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+1Cc to SPL. GP SR.No.102636.

+1Cc to Joseph Prabakar, Advocate, SR.No.102398.

W.A.No.4073 of 2019

AP (CO)
CSR 23.01.2020



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