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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.12.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Writ Appeal No.4085 of 2019 and C.M.P.No.25533 of 2019

M/s.Saravana International
rep.by its Proprietor Mr.C.R.Devanathan
No.26-B, Murugan Koil Street
A-Melamampattu, Panruti-607106. ... Appellant/Petitioner

-Vs-

The Assistant Commissioner (ST)
Panruti (Town), Panruti-607 106. ... Respondent /Respondent

For Appellant : Mr.V.Sundareswaran
For Respondent : Mr.Mohammed Shafiq
Special Government Pleader

Prayer : Appeal under Clause 15 of the Letters Patent against
the order of this Court dated 05.07.2019 passed in
W.P.No.12370 of 2019.

WP.No.12370 of 2019:Writ Petition filed under Article 226 of
the Constitution of India praying to issue a Writ of
Certiorari to call for the records of the respondent in TIN
No.33264481203/2016-17 dated 4.6.2018 quash the same in view
of apparent error and lack of jurisdiction

J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

The appellant Assessee, aggrieved by the order of the
learned Single Judge dated 05.07.2019 dismissing the writ
petition filed by the Assessee on the ground of availability
of alternative remedy, has filed this present intra Court
appeal.

2. Learned counsel for the appellant Assessee
Mr.V.Sundareswaran submitted that the Assessee, for the
assessment period 2016-17 could not furnish the audit report
as required by the newly inserted provisions in the Tamil Nadu
Value Added Tax Act, 2006 (hereinafter referred to as 'TNVAT



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Act') in Section 63A of the Act in prescribed Form No.'WW' for the said assessment period and for which reason, the assessing authority viz., the Assistant Commissioner, Panruti Town, passed the impugned 'best judgment assessment order' dated 01.02.2018, enhancing the taxable turnover by 50% and imposed additional tax at 14.5% thereon. He submitted that besides imposing the tax on such enhanced turnover, the assessing authority in the order dated 04.06.2018, had also imposed the prescribed penalty under the said provisions of 63A(2) of the TNVAT Act, 2006 to the extent of Rs.10,000/- (Rupees Ten Thousand only) for not filing of said Audit Report which the Assessee duly paid after the assessment order was passed by the assessing authority.

3. Learned counsel for the appellant Assessee further submitted that being aggrieved by the said 'best judgment assessment' by which the assessing authority arbitrarily enhanced the taxable turnover by 50% without any rhyme or reason, the assessee preferred the present Writ Petition before the learned Single Judge, who has however dismissed the Writ Petition on the ground of availability of alternative remedy by way of departmental appeal to the assessee. He relied upon the decision of the Division Bench of this Court in the case of "M/s.Nithra Furniture -vs- Assistant Commissioner (CT)" decided in W.A.Nos.1148 and 1149 of 2015 dated 11.08.2015, in which the delayed filing of prescribed Audit Report in Form 'WW' was condoned by the Division Bench of this Court and the assessing authority was directed to pass a revised assessment order in that case. He therefore submitted that even though the power of the 'best judgment assessment' prescribed under Section 22(4) of the Act could be invoked by the assessing authority in such a case, but that did not empower him to pass an arbitrary and high pitched assessment order in the case of the assessee, simply enhancing the taxable turnover by 50% only for the reason of not filing the Audit Report. This he submits, amounts to double jeopardy, enhanced tax liability and penalty for the same violation.

4. Learned counsel for the Revenue Mr.Mohammed Shafiq however supported the impugned order of the learned Single Judge as well as the impugned order passed by the learned assessing authority and he urged that, since the power to pass 'best judgment assessment' could be invoked for the reason of not filing the Audit Report as per the provisions of Section 63A of the TNVAT Act, 2006, therefore, the impugned assessment order could not be assailed directly by way of filing a writ petition under Article 226 of the Constitution of India. He further submitted that the availability of alternative remedy



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to the assessee under the Act was very much prescribed in law and therefore the order passed by the learned Single Judge is unassailable. He sought to distinguish the judgment of the Division Bench of this Court relied upon by the learned counsel for the appellant on the ground that in that case atleast the defect of filing of the audit report was cured by the assessee by later on filing of the same, upon which the Court directed the assessing authority to pass the revised assessment order.

5. Having heard the learned counsel for the parties, we are of the opinion that the present Writ Appeal is an exceptional case and deserves to be allowed, not because the assessing authority could not invoke his powers under Section 22(4) of the Act for the reason of not filing of the audit report, but because of the manner in which the 'best judgment assessment' has been passed by the assessing authority on 04.06.2018 for the assessment period 2016-17. The provisions of Section 63A of the TNVAT Act are quoted below for ready reference.

"63-A. Accounts to be audited in certain cases.-(1) Every registered dealer whose total turnover including zero-rate sale and sale in the course of inter-State trade or commerce as specified in Section 3 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) in a year, exceeds one crore rupees, shall get his accounts in respect of that year, audited by an Accountant and submit a report of such audit in the prescribed Form, duly signed and verified by the Accountant, to the assessing authority, within such period as may be prescribed.

Explanation.-For the purpose of this section "Accountant" means, a chartered accountant as defined in the Chartered Accountants Act, 1949 (Central Act 38 of 1949) or a cost accountant as defined in the Cost and Works Accountants Act, 1959 (Central Act 23 of 1959). (2) If such registered dealer fails to get his accounts audited and submit a report of such audit within the prescribed period, as required in sub-section (1), the assessing authority may, after giving a reasonable opportunity of being heard, direct such registered dealer to pay by way of penalty of such of rupees ten thousand, in addition to any tax payable, in respect of the said period:



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Provided that, this section shall not apply to the departments of Central and State Governments, local authorities, the railway administration as defined under the Railways Act, 1989 (Central Act 24 of 1989), the Tamil Nadu State Road Transport Corporations and similar such registered dealers, as may be notified by the Government."

6. The consequence of not getting his accounts audited even though his turnover is over Rupees One Crore and not submitting the audit report with the return or turnover is provided under explanation (2) to Section 63A itself viz., imposition of penalty of Rs.10,000/-, that too after giving a reasonable opportunity of hearing to the assessee concerned. Firstly, we find that no separate opportunity of hearing also was given by the assessing authority before passing the order imposing for penalty of Rs.10,000/- in the impugned assessment order dated 04.06.2018. Be that as it may. Since the assessee has paid the said amount of penalty to the assessing authority vide communication dated 29.03.2019 along with a demand draft, which is placed on record, we are not inclined to quash the penalty on the said ground.

7. But our judicial conscience is shocked at the manner in which the 'Best Judgment Assessment' order was passed by the assessing authority. No enquiry, material or reasons have been indicated in the impugned assessment order dated 04.06.2018 to make such a huge addition to the extent of 50% of the declared turnover and the only averment made in the impugned assessment order is that, since the dealer has not filed the Audit Report in the prescribed Form 'WW', hence an addition of 50% has been added in the declared turnover. This consequence is not provided either in the provisions of Section 22(4) of the Act, which permits the authority to invoke his 'best judgment assessment' powers, nor in Section 63A of the Act, which prescribes for consequence of imposition of penalty of Rs.10,000/- in case such Audit Report is not furnished by the dealer to the assessing authority.

8. The 'Best Judgment Assessment' power given to the assessing authority does not empower such assessing authority to pass 'Worst Judgment Assessment'. Though no strict yardstick can be prescribed either in Rules or otherwise, as to what will be the 'Best Judgment Assessment' in the facts and circumstances of the case, but such assessment orders when passed by the assessing authority has to reflect a due application of mind by the assessing authority to the relevant



facts of the case. Without any material on record, such arbitrary additions to the declared turnover by the Assessee is not the intent and purport of Section 22(4) of the Act, which empowers the authority, which has been quoted by the assessing authority in the impugned assessment order, to pass any order as he thinks fit. Therefore in our opinion, passing such 'best judgment assessment' making 50% enhancement of the declared turnover only for the reason that the assessee did not file the audit report, for which admittedly he suffered the penalty as prescribed by law, was not permissible.

9. We are conscious that the learned Single Judge has merely relegated the petitioner / appellant to the alternative remedy available to the assessee under the provisions of the Act itself, but as the settled legal position is that the existence and availability of the alternative remedy to an aggrieved assessee, and more so in the tax laws, is a rule, a discretion of the High Court and not a bar of jurisdiction under Article 226 of the Constitution of India. Depending upon the peculiarity of the facts of the case arising before the Court, the Court may either choose to interfere in the assessment orders or otherwise may decline to do so.

10. Since in the present case, we found that the yardstick adopted by the learned assessing authority was shockingly arbitrary, we have chosen to interfere in the present case. However, we make it clear that it is not a general proposition of law that we are laying down. We are also not saying that for the reason of not furnishing of the audit report as required by Section 63A of the Act, the assessing authority could not have invoked the 'best judgment assessment' powers under Section 22(4) of the Act. But, since we have found that the assessment order itself is without any cogent reasons and making an addition to an arbitrary extent of 50% of the declared turnover, without any other adverse material against the assessee, we are constrained to invoke our extraordinary writ jurisdiction in the present case under Article 226 of the Constitution of India and strike down the impugned 'best judgment assessment' order passed by the learned assessing authority on 04.06.2018.

11. The Writ petition is accordingly allowed and setting aside the order of learned Single Judge as well as the impugned assessment order dated 04.06.2018. We remit the matter back to the learned assessing authority to pass fresh assessment order after giving reasonable opportunity of hearing to the assessee, within a period of six months from



the date of receipt of a copy of this order.

12. With the above observations, the present Writ Appeal is allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Asst.Registrar (CS V)

/true copy/
Sub Asst. Registrar

kst
To

The Assistant Commissioner (ST)
Panruti (Town), Panruti-607 106.

+1 cc to Mr.V.Sundareswaran Advocate sr 103732
+1 cc to the Government Pleader High Court Madras
sr 104532

W.A.No.4085 of 2019

aa22/01/2020