IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Writ Appeal No.198 of 2020
and C.M.P.No.3071 of 2020

M/s.Arima Constructions Pvt Ltd.,
rep.by Mr.S.R.Arvind Kumar
Managing Director, 17-A SNR College
Road, Nava India, Coimbatore. ...Appellant/Petitioner

-Vs-

The Assistant Commissioner (ST)
Mettupalayam Assessment Circle
Coimbatore. ...Respondent/Respondent

Prayer : Appeal under Clause 15 of the Letters Patent against the order of this Court dated 08.08.2019 passed in W.P.No.23350 of 2019.

W.P.No.23350 of 2019:
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 Appellant : Mr.V.Srikanth
For Respondent : Mr.Mohammed Shaffiq, Special Government Pleader (T)

J U D G M E N T
(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

This writ appeal is directed against the order passed by the learned Single Judge dated 08.08.2019 in W.P.No.23350 of 2019, by which the learned Single Judge has dismissed the writ petition on the ground of availability of alternative remedy to the Assessee under Section 51 of the Tamil Nadu Value Added Tax Act 2006 and that a regular appeal can be filed the Assessee against the impugned assessment order dated 24.06.2019. The relevant portion of the order passed by the learned Single Judge are quoted below for ready reference.

> "11...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:
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> > '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.
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> > 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."

2. Learned counsel for the Assessee sought to urge before us that there was a breach of principles of natural justice while passing the impugned order.

3. Having heard the learned counsel for both parties and considering the facts and circumstances of the case, we are satisfied that there is no error in the order passed by the learned Single Judge and even the ground of breach of principles of natural justice, if at all can be established by the Assessee, the Assessee can very well file an appeal under Section 51 of the Act besides raising the grounds on the merits of the case. Therefore, it does not entitle the Assessee / Appellant to resort to writ jurisdiction invariably in all circumstances for the alleged breach of principles of natural justice.

4. We are satisfied that in the present case the appellant could avail the effective alternative remedy. The Writ Appeal is disposed of by relegating the matter back to the appellate authority. If such appeal is preferred within four weeks from today, the appellate authority shall not raise any objections on the ground of limitation subject to fulfilment of all other usual conditions for entertaining the appeal and shall decide the same in accordance with law. The original assessment order filed by the Assessee along with the typed set of papers shall be returned back to the learned counsel for the appellant / Assessee after obtaining proper acknowledgment.

5. With the above observations, the writ appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

KST

To

The Assistant Commissioner (CT)
Mettupalayam Assessment Circle
Coimbatore.

+1 CC to Mr.V.Srikanth, Advocate sr 10559.

W.A.No.198 of 2020

NMI(CO)
SP(10/03/2020)