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.196 of 2020

M/s.Sekar Exports Pvt Ltd.,
rep.by Mr.Shri K.Krishnam Raju
Managing Director, 16/35, Ranganadhaswamy
2nd Street, Chromepet,
Chennai-44. ..Appellant/Petitioner

-Vs-

1. The Appellate Deputy Commissioner (CT)
Chennai (East), 3rd Floor
PAPJM Annexe Building
1, Greams Road, Chennai-6.

2. The Assistant Commissioner (CT)
Pallavaram Assessment Circle
32&33, 2nd Street, Sripuram
Chromepet, Chennai-44. ..Respondents

Prayer : Appeal under Clause 15 of the Letters Patent against the order of this Court dated 28.06.2019 passed in W.P.No.17804 of 2019.

Prayer in WP.No.17804 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 1st respondent in A.P.VAT No.95/2016 dated 25.10.2018 and quash the same as being without jurisdiction and hence invalid and illegal, and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Appellant : Mr.V.Srikanth

For Respondent : Mr.Mohammed Shaffiq,
Special Government Pleader (T)

JUDGMENT

(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 28.06.2019 in W.P.No.17804 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 58 of the Tamil Nadu Value Added Tax Act 2006 and that a regular appeal can be filed the Assessee against the order passed by the first respondent/ first appellate authority against the assessment order dated 29.04.2016. The relevant portion of the order passed by the learned Single Judge are quoted below for ready reference.

> “7. This Court has given its careful consideration to the rival submissions and the discussion leading to considered view of this Court is as follows:
>
> a) With regard to first submission of writ petitioner that TNSTAT has already dismissed the writ petitioner's appeal on the same point, albeit, with regard to an earlier Assessment Year being 2008-09 and the same having been carried to this Court by way of a Tax Revision Case cannot be a ground to bypass the alternate remedy. It was always open to writ petitioner to accelerate the Tax Case Revision pending before Hon'ble Division Bench of this Court and if a finding is rendered, the same will bind the Tribunal i.e., TNSTAT. Suffice to say that this cannot be a ground to bypass the alternate remedy.
>
> b) The next point urged by writ petitioner i.e., that balance tax also has to be paid again for filing statutory appeal under Section 58 of TNVAT Act is unacceptable. If there are conditions for preferring statutory appeal, the same have to be complied with and the conditions by themselves unless there are other attendant circumstances cannot become a ground for bypassing the alternate remedy.
>
> c) With regard to the ground that a case law was pressed into service before the first Appellate Authority i.e, first respondent and the same has not been considered, the same at best qualifies as a ground to be agitated in a regular statutory appeal. The reason is, this requires examination of records and it has to be seen whether the case law was actually pressed into service and whether it forms part of the records of the first Appellate Authority. It is ideal to leave these aspects to TNSTAT to

> examine the same in the absence of any other attendant circumstances.
> d).....
> e).....
> f) Therefore, this Court is inclined to accept the submission of State Counsel that under the facts and circumstances of instant case, this is a fit case to relegate the writ petitioner to the alternate remedy i.e., appeal to TNSTAT.
> ....
> ....
> 8. In the light of the narrative thus far, this Court considers it appropriate to dismiss the instant writ petition assailing the impugned order albeit without expressing any opinion or view on the merits of the matter. All questions are left open to be decided by TNSTAT, if the writ petitioner chooses to file a regular statutory appeal to the Tribunal."

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 58 of the Act before the Sales Tax Appellate Tribunal 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 first appellate authority viz., the The Appellate Deputy Commissioner (CT), Chennai (East), Chennai. If such appeal is preferred within four weeks from today, the first 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.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Appellate Deputy Commissioner (CT)
   Chennai (East), 3rd Floor
   PAPJM Annexe Building
   1, Greams Road, Chennai-6.

2. The Assistant Commissioner (CT)
   Pallavaram Assessment Circle
   32&33, 2nd Street, Sripuram
   Chromepet, Chennai-44.

+1cc to M/s.V.Srikanth, Advocae Sr.No.10560

AKM/09.03.2020 /4P-4C/

W.A.No.196 of 2020