IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 7740 of 2006
and
W.P.M.P. No. 8508 of 2006

M/s. Hari & Co.,
133, G.C. Road,
Tuticorin -1. ... Petitioner

-vs-

1. The State of Tamil Nadu,
   Represented by its Secretary,
   Commercial Taxes Department,
   Fort St. George,
   Chennai - 600 009.

2. The Commissioner for Commercial Taxes,
   Ezhilagam,
   Chepauk,
   Chennai - 600 005.

3. The Commercial Tax Officer II (FAC),
   Office of the Commercial Tax Officer,
   Tuticorin. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the Third Respondent relating to its proceeding, Entry Tax No. 5840523/2005-06 dated 23.02.2006 and quash the same.

For Petitioner : Mr. Asiff Mohamed

For Respondents: Mrs. G.Dhana Madhri,
Government Advocate (Taxes)

O R D E R
(through video conference)

Heard Mr. Asiff Mohammed, Learned Counsel for the Petitioner and Mrs. G.Dhana Madhri, Learned Government Advocate (Taxes) appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Third Respondent by Order in Entry Tax No. 5840523/05-06 dated 23.02.2006 determined the liability of the Petitioner under Section 8 of the Tamil Nadu Tax on Entry of Motor Vehicles to Local Areas Act, 1990 (hereinafter referred to as the 'Act' for short). The Petitioner was entitled to prefer appeal against that order under Section 13 of the Act within a period of 30 days from the date of its receipt before the Appellate Authority. However, the Petitioner did not prefer any such appeal before the Appellate Authority, but has instead filed this Writ Petition on 17.03.2006 challenging the order passed by the Third Respondent.

3. There is no acceptable explanation from the Petitioner for not having resorted to that alternative remedy provided under the statute. In this context, it has to be recapitulated here that the Hon'ble Supreme Court of India in Assistant Collector of Central Excise -vs- Dunlop India Limited [(1985) 1 SCC 260] has succinctly explained the legal position relating to the exercise of discretionary powers under writ jurisdiction 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 Article226 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. The practice certainly needs to be strongly discouraged.”

4. That apart, there are also no reasons stated for having filed this Writ Petition in the Principal Seat of this Court instead of approaching the Madurai Bench of this Court within whose territorial limits of jurisdiction, the cause of action has wholly arisen and the 'seat of authority' of the Third Respondent, who has passed the impugned order, is situated. The mere circumstance that the First and Second Respondents exercise powers under the provisions of the Act for the whole of the State of Tamil Nadu cannot be said to mean as if the cause of

action has arisen within the territorial limits of jurisdiction of the Principal Seat of this Court. Even if it is assumed that in addition to the Madurai Bench of this Court, the Principal seat of this Court would also have territorial jurisdiction, the principle of forum conveniens would come into play as held by the Division Bench of this Court in C.Ramesh -vs- Director General of Police (Order dated 06.06.2013 in W.P. (MD) No. 8790 of 2013), as follows:-

> "7. Exercise of jurisdiction is based on arising of the cause of action, either in whole or in part in any one of the said Revenue Districts. [See RAJASTHAN HIGH COURT ADVOCATES' ASSOCIATION Vs. UNION OF INDIA AND OTEHRS (2001 (2) SCC 294) and B.STALIN Vs. THE REGISTRAR, SUPREME COURT OF INDIA AND OTHERS (2012 (3) LW 489 (FB))].
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> 8. It should be remembered that the part of cause of action must be substantial in nature. The territorial jurisdiction of the Court is linked with the place of accrual of cause of action. [See U.P. RASHTRIYA CHINI MILL ADHIKARI PARISHAD, LUCKNOW Vs. STATE OF U.P. AND OTHERS (1995 (4) SCC 738)].
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> 9. Referring to KUSUM INGOTS & ALLOYS LTD. Vs. UNION OF INDIA (2004 (3) CTC 365), a Full Bench of this Court in SANJOS JEWELLERS Vs. SYNDICATE BANK, BANGALORE AND OTHERS (2007 (5) CTC 305), held as under:-
>
>> "30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the Doctrine of forum conveniens. [See BHAGAT SINGH BUGGA Vs. DEWAN JAGBIR SAWHNEY, AIR 1941 CAL 670 : ILR (1941) 1 CAL 490; MADANLAL JALAN Vs. MADANLAL, 1945 (49) CWN 357: AIR 1949 CAL 495; BHARAT COKING COAL LTD. Vs. JHARIA TALKIES & COLD STORAGE (P) LTD., 1997 CWN 122; S.S.JAIN & CO. Vs. UNION OF INDIA, 1994 (1) CHN 445, and NEW HORIZONS LTD. Vs. UNION OF INDIA, AIR 1994 DEL 126]."
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> 10. Question of entertaining a lis disclosing a cause of action or part of cause of action is based on the averments contained in the affidavit etc. At that stage, the truth or otherwise of the averments need not be gone into. But, there must be necessary averments disclosing a cause of action, so that the Court can take cognizance of/entertaining the lis

exposed in the petition for taking further action. [See OIL AND NATURAL GAS COMMISSION Vs. UTPAL KUMAR BASU AND OTHERS (1994 (4) SCC 711)].

11. A Court cannot arrogate/assume/confer upon itself a jurisdiction-territorial jurisdiction, when it has no such jurisdiction. Lack of jurisdiction to entertain a matter goes to the root of the matter, otherwise whatever action taken or orders passed by the Court becomes a nullity, it is non est and of no consequence at all resulting in wasting of precious public time. Courts are barred from indulging in hypothetic and academic exercises."

5. Having regard to the aforesaid legal position, there does not appear to be any justification to entertain the Writ Petition for the relief sought in the Principal Seat of this Court. Though obvious, it is made clear that no view has been expressed by this Court on the correctness or otherwise on the merits of controversy involved in the matter.

6. In the result, the Writ Petition is dismissed with the aforesaid clarifications. Consequently, the connected Miscellaneous Petition is closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vjt/dm

To

1. The Secretary to the Government of Tamil Nadu,
   Commercial Taxes Department,
   Fort St. George,
   Chennai - 600 009.

2. The Commissioner for Commercial Taxes,
   Ezhilagam,
   Chepauk,
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3. The Commercial Tax Officer II (FAC),
   Office of the Commercial Tax Officer,
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Copy to

M/s. Hari & Co.,
133, G.C. Road,
Tuticorin -1.

+1 CC to The Special Government Pleader (T) sr 36617.

W.P. No. 7740 of 2006

EV(CO)
SP(20/11/2020)