IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.11.2020
CORAM
THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU
W.P. No. 23315 of 2012

Tvl. Sakthi Vinayaga Spinning Mills Pvt. Ltd.,
Represented by its Managing Director,
M.Sekar,
No. 4/4A-1B, Koorasampatty (Village),
Samalpatty - 635 306,
Uthangarai (PO & Taluk),
Krishnagiri District.
... Petitioner

-vs-

The Commercial Tax Officer,
Harur Assessment Circle,
Harur. ... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the files of the Respondent in TIN/YEAR 33923342060/2010-11dated 30.07.2012 and quash the same as being not in accordance with Section 22(2) of the TNVAT Act, 2006.

For Petitioner : Mr. R.Senniappan
For Respondent : Mrs. G.Dhana Madhri,
Government Advocate (Taxes)

O R D E R
(through video conference)

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

2. The Writ Petition challenges the Order No. TIN/YEAR 33923342060/ 2010-2011 dated 30.07.2012 passed by the Respondent determining the liability of the Petitioner for the year 2010-2011 under Section 22(2) the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as 'the Act' for short). The Petitioner was entitled to prefer appeal against that order under Section 51 of the TNVAT Act, within a period of 30 days from the date of its receipt before the Appellate Authority, who

has been empowered to condone delay in filing such appeal for an extended period of 30 days, if sufficient cause for not preferring appeal within that period is made out. However, the Petitioner did not prefer any such appeal before the Appellate Authority, but has instead filed this Writ Petition on 24.08.2012 challenging the order passed by the Respondent.

3. It requires to be highlighted 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."

There is no acceptable explanation from the Petitioner for not having resorted to that alternative remedy provided under the statute.

4. Learned Counsel for the Petitioner makes a fervent plea that inasmuch as the impugned order has been passed without affording any opportunity of personal hearing and does not contain reasons, it is in violation of the principles of natural justice. On a perusal of the impugned order, it is evident that the amount of tax payable by the Petitioner has been determined accepting the return submitted by the Petitioner, meaning thereby that the turnover and other relevant details as furnished by the Petitioner in its return has been the basis for making the assessment, which cannot be said to cause any prejudice to it. Even otherwise, there is nothing which precludes the Petitioner from raising those contentions, or any mistake or error in the calculation of the amount of tax,

in the statutory appeal.

5. Having regard to the aforesaid legal position, this Court does not express any view on the correctness or otherwise on the merits of the controversy involved in this case.

6. In the result, the Writ Petition, which cannot be entertained, is dismissed with the aforesaid clarifications. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

vjt/dm

To

The Commercial Tax Officer,
Harur Assessment Circle,
Harur.

+1 cc to Mr.R.Senniappan Advocate sr35933

W.P. No. 23315 of 2012

sj(co)
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