IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2020

CORAM

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

W.P. No. 3163 of 2016
and
W.M.P. No. 2596 of 2016

Tvl. Essa Garments,
Represented by its Proprietor,
Mr. S. Sadiqali
No. 10, Pushpa Nagar,
Power Garden,
Tirupur - 641 604. ...Petitioner

-vs-

The Assistant Commissioner (CT) (FAC),
Bazaar Circle,
Tirupur. ...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 CST. No. 973968/2012-13 dated 04.12.2015 and quash the same as being without jurisdiction and authority of law.

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

O R D E R
(through video conference)

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

2. The Respondent by Order in CST. No. 973968/2012-2013, dated 04.12.2015 had determined the liability of the Petitioner for the year 2012-2013 in a rectification proceeding under Section 84(1) of the Tamil Nadu Value Added Tax Act, 2006, (hereinafter referred to as the 'TNVAT Act' for short) input tax credit from

Tvl.Essa Hosiery Mills, Tirupur to Essa Garments, Tirupur, both of which are proprietary concerns of the Petitioner in terms of Section 19(14) of the TNVAT Act. The Petitioner was entitled to prefer revision against that order under Section 54 of the Act within a period of 30 days from the date of its receipt before the Revisional Authority, viz., Joint Commissioner, 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 that Revisional Authority, but has instead filed this Writ Petition on 25.01.2016 challenging the order passed by the 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 must 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."

Having regard to that legal position, this Court does not express any view on the correctness or otherwise on the merits of the factual controversies involved in the matter.

4. In the result, the Writ Petition, which cannot be entertained, is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Msm

To

The Assistant Commissioner (CT) (FAC),
Bazaar Circle,
Tirupur.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.34037
+1cc to the Government Pleader, S.R.No.34152

W.P. No. 3163 of 2016

AD(CO)
KKV/04/11/2020