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.2950 of 2019
and C.M.P.No.19171 of 2019

Tvl.Surabhi Granites
represented by its Partner
223, Thadagam Main Road
Opp.J.M.Hospital, KNG Pudur
Coimbatore - 641 025. ..Appellant /Petitioner

-Vs-

The Assistant Commissioner (CT)
Velandipalayam Assessment Circle
Coimbatore. ..Respondent /Respondent

For Appellant : Ms.Naveena D.
For Respondent : Mr.Mohammed Shaffiq,
Special Government Pleader

Prayer : Appeal under Clause 15 of the Letters Patent against the order of this Court dated 05.07.2019 passed in W.P.No.19251 of 2019.

Prayer in WP.No.19251 of 2019 : Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, quashing the impugned order passed by the respondent in TIN 33066204809/2014-15 dated 05.06.2017 and the consequential notice in TIN 33066204809/2014-15 dated 15.04.2019 and pass such further or other orders as this Hon'ble Court may deem fit and proper under the circumstances of the case and thus render justice.

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 05.07.2019 in W.P.No.19251 of 2019, by which the learned Single Judge has dismissed the writ petition on the ground of alternative remedy being available to the petitioner assessee against the impugned assessment order. The reasons assigned by the learned Single Judge are quoted below for ready reference.

> "19. In the instant case, the impugned order itself makes it clear that an appeal lies to the jurisdictional Deputy Commissioner within 30 days from the date of receipt of a copy of the order, but writ petitioner has not chosen to file a statutory appeal.
>
> 20. There is no disputation before this Court that a statutory appeal lies to jurisdictional Appellate Deputy Commissioner under Section 51 of TNVAT Act.
>
> 21. As rightly pointed out by learned counsel for Revenue, writ petitioner has gone into slumber after service of impugned order in the writ petition and has woken up only after the distraint notice was served on the writ petitioner on 15.04.2019 and has chosen to come to this Court on 1st July 2019 with the instant writ petition.
>
> 22. There is no explanation whatsoever as to why the writ petitioner did not choose either to come to this Court or prefer a statutory appeal immediately after the receipt of the impugned order. It is now too late in the day to assail the impugned order.
>
> 23. Notwithstanding this position, in the instant case, objections have been considered and the Assessing Officer has returned findings on the same. Submissions before this Court are in the nature of either not appreciating all the documents filed along with the objections or not considering some of the documents not filed along with the objections. Therefore, these can at best qualify as grounds of appeal in a statutory appeal. Writ petitioner has missed the bus and filed the writ petition at such a belated point of time and this Court does not find any exceptional situation to interfere in this setting in the instant case."

2. Learned counsel for the Assessee had also filed a Rectification Application, which was dismissed by the assesment authority. However, she fairly submits that the Assessee may now be permitted to avail the alternative remedy of appeal against the original assessment order as well as the

Rectification order before the first appellate authority and the delay caused in filing such an appeal may be condoned here by this Court.

3. Having heard the learned counsel for both parties and considering the facts and circumstances of the case, we dispose of the present Writ Appeal by permitting the appellant Assessee even now to file regular appeals under Section 51 of the Tamil Nadu Value Added Tax Act, 2006 against the impugned orders and if such appeals are filed within four weeks from today, the first appellate authority shall not raise any objection about the limitation and subject to satisfaction of all other usual conditions of entertaining the appeal, and may consider the appeals in accordance with law.

4. With the above observations, the writ appeal is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Assistant Commissioner (CT)
Velandipalayam Assessment Circle
Coimbatore.

+1cc to Mr.S.Durairaj, Advocate SR.No.10498
+1cc to The Special Government Pleader Sr.No.

AKM/11.03.2020 /3P-4C/

W.A.No.2950 of 2019