BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.02.2020**

CORAM:

THE HONOURABLE MR.JUSTICE A.P.SAHI, CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.(MD)No.21856 of 2016

M/s.V.V.V.and Sons Edible Oil Limited,
Represented by its Director,
Sri. V.R.Muthu,
No.443, Bazaar, Virudhunagar-6. : Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by Secretary to
The Government, Commercial
Taxes Department, Fort St. George,
Chennai-600 006.

2.The Commercial Tax Officer-1 (FAC),
Virudhunagar Assessment Circle,
Virudhunagar.

3.The Appellate Deputy Commissioner (CT),
Virudhunagar. : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration, striking down and declaring the second proviso to Section 51(1) of the TNVAT Act, 2006 as well as the second proviso to Section 58(1) of the TNVAT Act 2006 as unconstitutional and ultra vires Article 14, 19 (1)(g) and Article 265 of the Constitution of India.

For Petitioner : Mr.S.Raja Jeya Chandra Paul
For Respondents : Mrs.J.Padmavathi Devi,
Special Government Pleader.

ORDER

[Order of the Court was made by *SUBRAMONIUM PRASAD, J.*]

The challenge in the instant Writ Petition is to the vires of Section 51(1) of the TNVAT Act, 2006 (hereinafter referred to as 'the said Act') and the second proviso to Section 58(1) of the said Act.

2.Section 51 of the said Act provides for an appeal from an Assessing Authority to an Appellate Deputy Commissioner. The said

Section provides that for entertaining the appeal, the assessee must deposit 25% of the difference between the tax assessed by the assessing authority and the tax admitted by the assessee. Similarly, the Second proviso to Section 58 of the said Act also provides that for preferring an appeal from the Appellate Deputy Commissioner to the Appellate Tribunal, the assessee has to deposit 25% of the amount of the difference of tax as ordered by the Appellate Deputy Commissioner or Appellate Joint Commissioner of the Appellate Authority.

3.It is the contention of the writ petitioner that the pre-deposit of the amount as stipulated under two Sections is onerous and it makes the appellate remedy completely illusionary, especially in view of absence of any provision giving permission to waive the payment of the said amount. The challenge to such Sections which mandates pre-deposit of money, has been settled by the Hon'ble Supreme Court in a number of judgments.

4.In ***Anant Mills Co. Ltd. V. State of Gujarat (AIR 1975 SC 1234)***, the Hon'ble Supreme Court has categorically held that the right of appeal is only a creature of a statute and it cannot be circumscribed by conditions. Paragraph No.40 of the said judgment is re-produced for ready reference:-

> "40......*The right of appeal is the creature of a statute. Without a statutory provision creating such a right the aggrieved is not entitled to file an appeal. We fail to understand as to why the legislature while granting the right of appeal cannot impose conditions for the exercise of such right. In the absence of any special reasons there appears to be no legal or constitutional impediment to the imposition of such conditions. It is permissible, for example. to prescribe a condition in criminal cases that unless a convicted person is released on bail, he must surrender to custody before his appeal against the sentence of imprisonment would be entertained. Likewise, it is permissible to enact a law that no appeal shall lie against an order relating to an assessment of tax unless the tax had been paid. Such a provision was on the statute book- in section 30 of the Indian Income-tax Act, 1922. The proviso to that section provided that " . . . . . no appeal shall lie against an order under sub-section (1) of section 46 unless the tax had been paid". Such conditions merely regulate the exercise of the right of appeal so that the same is not abused by a recalcitrant party and there is difficulty in the enforcement of the order appealed against in case the appeal is ultimately dismissed. It is open to the Legislature to impose an*

accompanying liability upon a party upon whom a legal right is conferred or to prescribe conditions for the exercise of the right. Any requirement for the discharge of that liability or the fulfilment of that condition in case the party concerned seeks to avail of the said right is a valid piece of legislation, and we can discern no contravention of Article 14 in it....”

5.Similarly, in ***Shyam Kishore and others Vs. Municipal Corporation of Delhi and another (1993 1 SCC 22)***, the challenge was made to the provision under the Delhi Municipal Corporation Act 1957, where again, there is a provision, which mandates the deposit of 25% of the amount of the tax demanded as a pre-condition for entertaining the appeal and there was no provision for waiver of the condition of pre-deposit. The Hon'ble Supreme Court, after considering the Anant Mills Co., Ltd, referred to above, upheld the validity of the statute.

6.Similarly, in ***Vijay Prakash D.Metha and another Vs. Collector of Customs (Preventive) Bombay (1998 (4) SCC 402)***, the Hon'ble Supreme Court has held that the right to appeal is neither an absolute right nor an ingredient of natural justice, which principles are to be followed in judicial and quasi-judicial proceedings. It is held that the right of appeal can be circumscribed by conditions prescribed in the statute.

7.In view of these judgments, there is no merit in the arguments advanced by the learned counsel appearing for the writ petitioner. We find that the judgments of the Hon'ble Supreme Court covers the field.

8.The Writ Petition, therefore, fails. Accordingly, the Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CRL.SIDE)

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/ /2020

Sub Assistant Registrar(CS)

PJL / Myr

To
1.The Secretary to the Government,
State of Tamil Nadu,
Commercial Taxes Department, Fort St. George,
Chennai-600 006.

2.The Commercial Tax Officer-1 (FAC),
Virudhunagar Assessment Circle,
Virudhunagar.

3.The Appellate Deputy Commissioner (CT),
Virudhunagar.

+1 CC to SPL.GP (SR-8793[F] dated 27/02/2020)

+1 CC to MR.S.RAJA JEYACHANDRAN, Advocate (SR-8622[F] dated 27/02/2020)

JUDGMENT MADE IN
W.P.(MD)No.21856 of 2016
26.02.2020

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