

In the High Court of Judicature at Madras

Dated : 24.2.2021

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Ms.Justice R.N.MANJULA

Writ Appeal No.627 of 2021 and CMP.No.2800 of 2021

M/s.Sri Sarada Textiles Processors
(P) Ltd., rep.by its Managing
Director Dr.P.Madalaimuthu ...Appellant/Petitioner
No.707/1 Urachikottai
Bhavani 638302

Vs

The Assistant Commissioner,
Bhavani Assessment Circle,
Bhavani, Erode District. ...Respondent/Respondent

APPEAL under Clause 15 of the Letters Patent against the
order dated 15.10.2020 made in W.P.No.5407 of 2017.

WP.No.5407 of 2017:Writ Petition filed under Article 226 of the
Constitution of India praying for issue a Writ of Certiorari or
any other appropriate Writ, order or direction in the nature of
a Writ to call for the records of the Respondent in TIN
No.33432940604/2012-2013 dated 15.09.2016 and served on
16.11.2016 and quash the same as illegal arbitrary, without
Jurisdiction and against the Provision of the Act.

For Appellant : Mr.K.Soundararajan
For Respondent : Mr.R.Swarnavel, GA (T)

Judgment was delivered by T.S.SIVAGNANAM, J

We have elaborately heard Mr.K.Soundararajan, learned
counsel for the appellant and Mr.R.Swarnavel, learned Government
Advocate (Taxes) accepting notice for the respondent.

2. The writ petitioner, which is a registered dealer on the
file of the respondent under the provisions of the Tamil Nadu
Value Added Tax Act, 2006 (for brevity, the VAT Act) and the
Central Sales Tax Act, 1956, has filed this writ appeal being

aggrieved by the order dated 15.10.2020 passed in W.P.No.5407 of 2017 filed by them challenging the assessment order dated 15.9.2016 passed under the provisions of the VAT Act for the year 2012-13.

3. The learned Single Judge did not go into the merits of the matter, but rejected the said writ petition on the ground that there has been an alternate remedy available under the provisions of the the VAT Act, that the said writ petition was filed beyond the maximum time limit stipulated under the VAT Act for filing the appeal and that therefore, it was not maintainable.

4. An identical issue was considered by us in W.A.No.493 of 2021 dated 18.2.2021 [Mahindra & Mahindra Ltd. Vs. Joint Commissioner (CT) Appeals, Chennai-6 and another] wherein we dealt with the issue as to whether the decision of the Hon'ble Supreme Court in the case of ACCT, LTU, Kakinada Vs. Glaxo Smith Kline Consumer Health Care Ltd. [reported in 2020 (36) GSTL 305], which was relied upon by the learned Single Judge, laid down the proposition that there has been absolute bar for entertaining a writ petition, which had been filed beyond the statutory period of limitation prescribed under the Act for preferring a statutory appeal before the Appellate Authority.

5. The relevant portions in the decision rendered by us in the case of Mahindra & Mahindra Ltd., read thus :

"4. The learned Single Judge placed reliance on the decision of the Hon'ble Supreme Court in the case of ACCT, LTU, Kakinada Vs. Glaxo Smith Kline Consumer Health care Ltd. [reported in 2020 (36) GSTL 305] and in the said decision, it was emphatically laid down that the High Court, in exercise of power under Article 226 of The Constitution of India, ought not to have entertained the writ petition assailing the order passed by the Statutory Authority, which was not appealed against within the maximum period of limitation before the concerned Appellate Authority.

5. In our respectful view, the decision of the Hon'ble Supreme Court in the said decision has not held that a writ petition under Article 226 of the Constitution of India is an absolute bar. We are of the said view after noting the observations/findings rendered by the Hon'ble Supreme Court in the following paragraphs :

"11. In the backdrop of these facts, the central question is: whether the High Court ought to have entertained the writ petition filed by the respondent? As regards the power of the High Court to issue directions, orders or writs in exercise of its jurisdiction under Article 226 of the Constitution of India, the same is no more res integra. Even though the High Court can entertain a writ petition against any order or direction passed/action taken by the State under Article 226 of the Constitution, it ought not to do so as a matter of course when the aggrieved person could have availed of an effective alternative remedy in the manner prescribed by law (see Baburam Prakash Chandra Maheshwari vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar [AIR 1969 SC 556] and also Nivedita Sharma vs. Cellular Operators Association of India & Ors. [2011 (14) SCC 337]. In Thansingh Nathmal & Ors. vs. Superintendent of Taxes, Dhubri & Ors. [AIR 1964 SC 1419], the Constitution Bench of this Court made it amply clear that although the power of the High Court under Article 226 of the Constitution is very wide, the Court must exercise self imposed restraint and not entertain the writ petition, if an alternative effective remedy is available to the aggrieved person.....

15. The High Court may accede to such a challenge and can also non suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner chooses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three Judge Bench of this Court in Oil and Natural Gas Corporation Limited (supra). In other words, the fact that the High Court has wide powers, does not mean that it would issue a

writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose.

19..... Pertinently, no finding has been recorded by the High Court that it was a case of violation of principles of natural justice or non compliance of statutory requirements in any manner. Be that as it may, since the statutory period specified for filing of appeal had expired long back in August, 2017 itself and the appeal came to be filed by the respondent only on 24.9.2018, without substantiating the plea about inability to file appeal within the prescribed time, no indulgence could be shown to the respondent at all."

6. On a reading of the above extracted paragraphs, it is seen that the Hon'ble Supreme Court, after referring to the decision of the Constitution Bench in the case of Thansingh Nathmal, held that although the power of the High Court under Article 226 of the Constitution is very wide, the Court must exercise self imposed restraint and not entertain the writ petition. Further, in paragraph 15, the Hon'ble Supreme Court observed that the High Court may accede to such a challenge and can also non suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. In addition, in paragraph 19, the Hon'ble Supreme Court took note of the fact that when the High Court refuses to exercise the jurisdiction under Article 226 of The Constitution of India, it would be necessary for the Court to record that there was no case of violation of the principles of natural justice or non compliance of statutory requirements in any manner.

7. Therefore, there are certain broad parameters, within which, the Court has to exercise its jurisdiction under Article 226 of The Constitution of India, which read as hereunder :

(i) if there is unfairness in the action of the Statutory Authority;

(ii) if there is unreasonableness in the action of the Statutory Authority;

(iii) if perversity writs large in the action taken by the Authority;

(iv) if the Authority lacks jurisdiction to decide the issue and

(v) if there has been violation of the principles of natural justice, the Court will step in and exercise its jurisdiction under Article 226 of The Constitution of India.

8. Further, it would be highly beneficial to refer to the celebrated decision of the Constitution Bench of the Hon'ble Supreme Court in the case of *Mafatlal Industries Ltd. Vs. Union of India* [reported in 1997 (5) SCC 536] wherein it was held that the jurisdiction of the High Courts under Article 226 and that of the Hon'ble Supreme Court under Article 32 of The Constitution of India could not be circumscribed by the provisions of the Enactment (Central Excise Act) and they would certainly have due regard to the legislative intent evidenced by the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the Act. Further, the Court directed that the writ petition would be considered and disposed of in the light of and in accordance with the provisions of Section 11B of the Central Excise Tax Act and for such a reason, the power under Article 226 of The Constitution of India has to be exercised to effectuate rule of law and not for abrogating it.

9. In the light of the above, we have no hesitation to hold that the observation of the learned Single Judge to the effect that there is absolute bar for entertaining a writ petition does not reflect the correct legal position. Hence, we are inclined to interfere with the observation made in the impugned order."

6. In the light of the above decision wherein we have held that there is no absolute bar for entertaining a writ petition, we are of the view that the decision of the learned Single Judge in holding as if there is a blanket ban for entertaining a writ petition cannot be countenanced. Hence, we are inclined to interfere with the impugned order.

7. Next, we move on to the merits of the matter. The Assessing Officer proposed to revise the assessment, which was initially completed by issuance of a notice under Section 27 of the VAT Act. The following nine defects were pointed out by the Assessing Officer :

"1. Difference of purchase turnover of dyes and chemicals noticed between Annexure I and Form - I returns for February 2013;

2. Difference of taxable turnover noticed between Annexure II and Form-I return for February 2013;

3. ITC reversal under Section 19(9) of the TNVAT Act, 2006 on invisible loss @ 10% on Rs.5,14,595/-;

4. Sale of plant and equipments taxable @ 5%;

5. Deemed sale value of taxable goods declared as exempted purchases in the monthly returns;

6. TDS not deducted on the addition of buildings @ 2% under Section 13;

7. TDS not deducted on the dyeing contract charges @ 5% under Section 13;

8. Dyeing charges received in the course of inter-state trade not covered by 'C' declaration warrants reversal of ITC under Section 19(5)(c); and

9. No recorded evidence produced for sales return of Rs.80,827/- taxable @ 5%."

8. The appellant submitted their reply as well as additional reply both dated 09.11.2015. Thereafter, it appears that the Assessing Officer did not call for the book of accounts of the appellant, but proceeded to complete the assessment. In so far as defect Nos.1, 2, 3, 6 and 9 are concerned, the proposal made in revision notice was dropped by the Assessing Officer on being satisfied with the explanation offered by the appellant. This would prima facie show that there had been application of mind by the Assessing Officer.

9. So far as defect Nos.4, 5 and 7 are concerned, the Assessing Officer confirmed the proposal made in the revision notice. With regard to defect No.8, the proposal was confirmed by the Assessing Officer and the appellant accepted the same and was agreeable to remit the amount of tax called upon to be paid. Hence, the contest in the said writ petition was only with regard to defect Nos.4, 5 and 7.

10. From the counter filed in the said writ petition, we find that the Assessing Officer confirmed the proposal on the above three defects primarily for the reason that the appellant did not produce any evidence to substantiate their claim.

11. Our attention is drawn to a certificate issued by the Chartered Accountant dated 16.2.2017, which is as follows :

"This is to certify that in the financial statements of M/s.Sri Sarada Textile Processors (P) Ltd., having its registered office at No.707, Urachikottai, Bhavani-638302 for the year ended 31.3.2013, an amount of Rs.3,55,741/- disclosed as deletion under Note 11, Part B 'Capital WIP' was actually an R.O. Plant held as capital WIP, which was later capitalized on 01.9.2012. Hence, the said transaction did not involve a real deletion of capital asset but a capitalization of work-in-progress only.

This certificate is issued upon express request by the client and to be used for the purpose of producing to VAT Authorities and not for any other purpose without our written consent."

12. No doubt, the said certificate dated 16.2.2017 is much after the assessment order dated 15.9.2016. Nevertheless, had an opportunity been granted to the appellant to produce the books of accounts and other records, in all probabilities, the dispute would have been resolved. Thus, considering the peculiar facts and circumstances of the case, we are of the considered view that one more opportunity can be granted to the appellant to go before the Assessing Officer and place all records so as to enable the Assessing Officer to complete the assessment in accordance with law after taking note of the relevant factors.

13. For the above reasons, the writ appeal is allowed and the impugned order is set aside. Consequently, the finding rendered by the Assessing Officer in the order dated 15.9.2016 in so far as defect Nos.4, 5 and 7 is set aside and the matter is remanded to the Assessing Officer for a fresh consideration. The appellant is permitted to submit one more reply with copies of relevant records within a period of 10 days from the date of receipt of a copy of this judgment. Thereafter, the Assessing Officer shall afford an opportunity of personal hearing to the

authorized representative of the appellant, direct them to produce the books of accounts and other records and after a full-fledged hearing, pass a reasoned order on merits and in accordance with law. No costs. Consequently, the connected CMP is closed.

Sd/-
Asst.Registrar (CS III)

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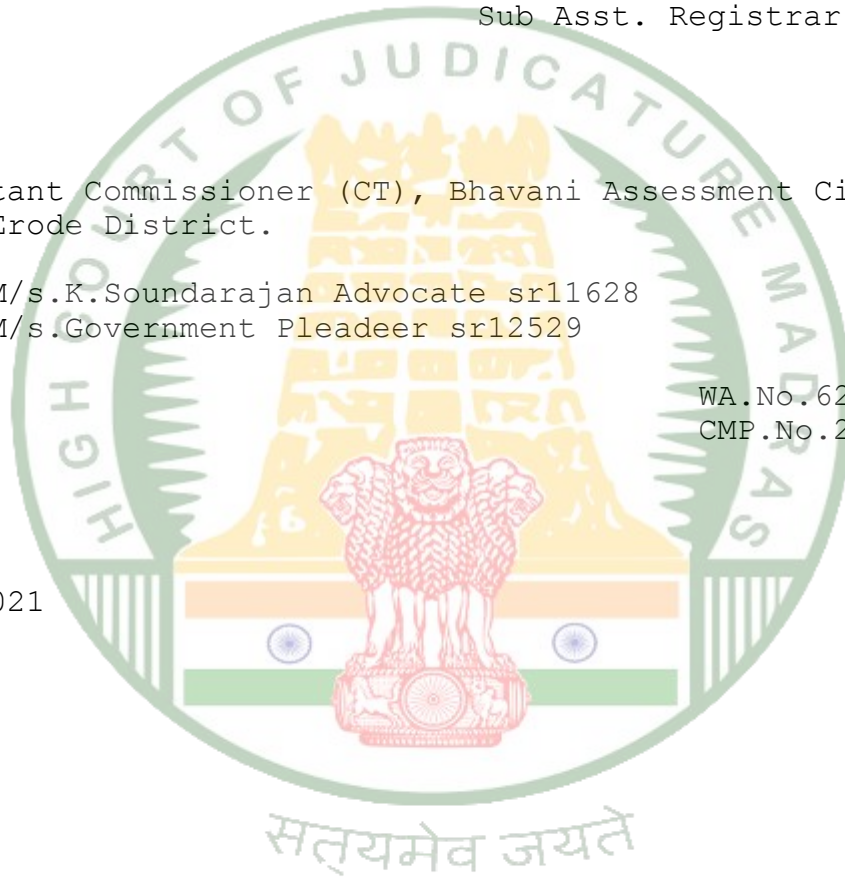
Sub Asst. Registrar

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To
The Assistant Commissioner (CT), Bhavani Assessment Circle,
Bhavani, Erode District.

+1 cc to M/s.K.Soundarajan Advocate sr11628
+1 cc to M/s.Government Pleadeer sr12529

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CMP.No.2800 of 2021

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