

In the High Court of Judicature at Madras

Dated : 10.3.2021

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM
and

The Honourable Ms.Justice R.N.MANJULA

Writ Appeal No.581 of 2021 and CMP.No.2454 of 2021

M/s.Sojitz India Private Ltd.,
rep.by its Managing Director
Mr.Takahiro Ebisu

... Appellant

Vs

1. The Commercial Tax Officer
(Enf.), Roving Squad, Vellore.

2. The Joint Commissioner (CT),
Vellore Division, Vellore.

.... Respondents

APPEAL under Clause 15 of the Letters Patent against the order dated 08.12.2020 made in W.P.No.30257 of 2018.

Prayer in W.P.No.30257 of 2018:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the Second Respondent passed in proceedings R.P. No. 82/2016 dated 06.02.2017 and consequent demand notice of the First Respondent in proceedings G.D. No.661/2015-16 dated 03.03.2017 and quash the same.

For Appellant : Mr.Hari Radhakrishnan

For Respondents : Mrs.G.Dhanamadhri, GA(T)

Judgment was delivered by T.S.SIVAGNANAM, J

We have elaborately heard Mr.Hari Radhakrishnan, learned counsel for the appellant and Mrs.G.Dhanamadhri, learned Government Advocate (Taxes) accepting notice for the respondents.

2. The writ appeal, filed by the dealer, is directed against the order dated 08.12.2020 made in W.P.No.30257 of 2018.

3. The appellant filed the said writ petition challenging an order passed by the second respondent in R.T.No.82/2016 dated 06.2.2017. The said revision petition was filed by the appellant before the second respondent against the order passed by the first respondent herein dated 13.3.2016 detaining the goods, which were transported from Maharashtra to Tamil Nadu and

imposing a compounding fee. The second respondent disposed of the said revision petition by remanding the matter to the first respondent to fix the correct compounding fee as per the provisions of the Statute namely Section 72(1)(a) of the Tamil Nadu Value Added Tax Act, 2006 (for short, the Act).

4. The learned Single Judge, who heard the said writ petition, held that as against the order passed by the second respondent dated 06.2.2017, a second revision lies before the Additional Commissioner (CT) (RP), office of the Commissioner of Commercial Taxes, Chepauk, Chennai-5 and the time limit for filing the second revision was 30 days. Further, by placing reliance on the decision of the Hon'ble Supreme Court in the case of Assistant Commissioner (CT), LTU, Kakinada Vs. Glaxo Smith Kline Consumer Health Care Limited [Civil Appeal No. 2413 of 2020], the learned Single Judge held that the High Court, in exercise of powers under Article 226 of The Constitution of India, ought not to entertain a writ petition assailing the order passed by a statutory authority which was not appealed against within the maximum period of limitation before the concerned Appellate Authority and accordingly dismissed the said writ petition.

5. The learned Single Judge has not given any consequential directions nor made any observation as to whether the appellant has any other remedy as against the order passed by the first respondent dated 13.3.2016.

6. We had an occasion to consider the correctness of similar observations made by the Writ Court in the case of Mahindra & Mahindra Ltd. Vs. Joint Commissioner (CT) (Appeals) [W.A.No. 493 of 2021 dated 18.2.2021]. After taking note of the various decisions, we have held that there is no absolute bar in entertaining a writ petition under Article 226 of The Constitution of India. The relevant portions in the said judgment read thus :

"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."

7. In the light of the said decision rendered by us, one of the parameters, which can be taken note of by the Constitutional Court is as to whether there is unreasonableness in the action of the statutory authority; whether perversity writs large on the face of the action taken by the Authority; if the Authority lacks jurisdiction to decide the issue; and if there has been violation of the principles of natural justice.

8. Bearing in mind the above legal principles, we have examined the order passed by the second respondent dated 06.2.2017. We have no hesitation to hold that the perversity writs large on the face of the order dated 06.2.2017. The second respondent has virtually abdicated his power as a Revisional Authority and all that he has done was extracting the entire objections filed by the appellant and held that the Roving Squad Officer collected one time compounding fee under Section 72(1) (a) of the Act and that therefore, the correct compounding fee had to be fixed and accordingly remitted the matter back to the first respondent.

9. There is absolutely no discussion as to how the grounds raised by the appellant were not tenable and as to how the documents, which were filed by the appellant, were not admissible or sustainable. We have also seen the order of detention passed by the first respondent, in which, one of the grounds of detention was that the goods were transported from Mumbai to Chennai in the name of stock transfer 'with defective documents'. The first respondent did not state as to why, in his opinion, the documents produced by the appellant were defective.

10. The appellant's case is quite simple in the sense that they are in the business of selling and marketing of mini excavators and spare parts. Based on the request made from Mumbai and Pune, one mini excavator of Japanese make was transported to Mumbai for demonstration and training to customers. By letter dated 25.1.2016, one M/s.FYN Technologies Pvt. Ltd., addressed to the Mumbai office of the appellant requesting to arrange for a free demo and training to their customers about the new machine in Maharashtra location on returnable basis. The said letter also mentioned that in more than 15 locations, free demo and training was to be conducted during 16.2.2016 to 31.3.2017. Further, the said M/s.FYN Technologies Pvt. Ltd., stated that the machine would be returned to the appellant upon completing the demo in the same condition.

11. The machines were transported to Maharashtra accompanied by a clarification by the appellant dated 25.1.2016. This was accompanied by a stock transfer invoice of even date wherein it had been stated 'not for sale', but for demonstration purpose on returnable basis. The stock transfer delivery note also stated that it was not for sale, but for demonstration on returnable basis. Soon after the detention, though the appellant paid one time tax for release of the equipment, they filed their objections dated 12.3.2016 mentioning among other things that the mini excavator was dispatched from Chennai branch on 25.1.2016, that the same returned on 09.3.2016 and that there

was no possibility to sell the machine to the said M/s.FYN Technologies Pvt. Ltd.

12. The appellant also enclosed a copy of LR for transfer of machines from Mumbai to Chennai for the reference of the first respondent. Further, the appellant explained that they raised a stock transfer invoice on 07.3.2016, that due to some technical issues, they were unable to dispatch the materials on the particular date and that the same were dispatched from the Mumbai branch of the appellant to Chennai on 09.3.2016.

13. Thereafter, the first respondent issued a compounding notice dated 13.3.2016 wherein he verbatim extracted the objections/reply filed by the appellant dated 12.3.2016 and stated that the reply filed by the dealer could not be accepted, as there was no proof of documents enclosed or produced for verification of branches and the relation between the other dealer involvement.

14. In our considered view, the first respondent has not recorded as to why the documents produced by the appellant cannot be accepted. If any clarification is required, the same could have been called for. Therefore, it is clear that the compounding notice dated 13.3.2016 is not only a non-speaking notice, but a notice in violation of the principles of natural justice, as the grounds raised by the appellant have not been considered by the first respondent.

15. The same mistake was committed by the second respondent - the Revisional Authority, who is in the cadre of Joint Commissioner. We have observed that the order is devoid of any reasons. Therefore, not only the compounding notice, but also the detention order are arbitrary, unreasonable and in violation of the principles of natural justice. Further, this Court is not denuded of its jurisdiction to interfere with the same.

16. The learned Government Advocate appearing for the respondents vehemently contends that in terms of Section 57 of the Act, the second revisional power is vested with the Additional Commissioner.

17. A revisional power cannot be akin to appellate power and at best, the Revisional Authority can consider as to whether there was any procedural error committed by the Lower Authority, but would not be justified in re-appreciating the entire facts. The remedy provided under Section 57 of the Act, in so far as the appellant's case is concerned, is not an effective remedy because the First Revisional Authority failed to record any reasons nor there was any fairness in the approach of the second respondent apart from violating the principles of natural

justice. This issue can never be set right by the Second Revisional Authority, who appears to be an officer in the cadre of Additional Commissioner.

18. Therefore, in the facts and circumstances of the case, we hold that the writ petition is maintainable before this Court. Having been satisfied with the facts and circumstances of the case, the order passed by the second respondent dated 06.2.2017 and the demand notice dated 03.3.2017 issued by the first respondent are unsustainable and we are constrained to interfere with the same.

19. For the foregoing reasons, the writ appeal is allowed and the impugned order passed by the learned Single Judge is set aside. The writ petition is allowed. Consequently, the order passed by the second respondent dated 06.2.2017 in R.P.No.82/2016 and the demand notice dated 03.3.2017 issued by the first respondent are set aside. The first respondent is directed to refund the sum of Rs.6,50,000/- (Rupees six lakhs and fifty thousand only) paid by the appellant dealer at the time of release of goods. The said amount shall be refunded to the appellant - dealer within a period two months from date of receipt of a copy of this judgment with an option to adjust the same against any other tax liability that may arise in respect of the appellant. No costs. Consequently, the connected CMP is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

RS

To

- 1.The Commercial Tax Officer (Enf.), Roving Squad, Vellore.
- 2.The Joint Commissioner (CT), Vellore Division, Vellore.

+1cc to the Government Pleader(Taxes), S.R.No.15705.

LN(CO)
CSR 19.04.2021

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CMP.No.2454 of 2021