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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.14501 & 14502 of 2013
& M.P.Nos.1 & 1 of 2013
& W.M.P.Nos.22741 & 22742 of 2018

M/s.Rukma Industries Limited,
(now amalgamated with M/s. Surana Corporation Ltd.)
rep. by its Managing Director,
No.29, Whites Road, Royapettah,
Chennai 600 014.

...Petitioner in both W.Ps.

Vs.

1. The Assistant Commissioner (CT) (FAC),
Tondiarpet Assessment Circle,
IV Floor, Kuralagam Annexe,
Chennai 600 108.

2. Mr.C.Ramasubramaniam,
Interim Resolution Professional,
Raji'3B1, 3rd Floor, Gaiety Palace,
N.1L, Blackers Road, Mount Road,
Chennai, Tamil Nadu 600 002.

...Respondents in both W.Ps.

(R2 is suo motu impleaded as per the order of this Court dated
15.07.2019 in W.P.Nos.14501 & 14502 of 2013)

Common Prayer: Writ Petitions filed under Article 226 of the
Constitution of India, to issue a Writ of Certiorarified
Mandamus, calling for the records on the file of the 1st
respondent in TNGST.1200850/2001-2002 and TNGST.1200850/2002-
2003, both dated 16.04.2013 and quash the same as illegal and
against the principles of natural justice and fair play and
direct the respondent to furnish the statement and records
relied upon in the impugned order and provide opportunity of
cross examination of third parties/witness.

(In both W.Ps.)

For Petitioner : No appearance
For Respondents : Mr.V.Veluchamy (For R1)
Government Advocate

No appearance (For R2)



COMMON ORDER

The lis on hand are filed challenging the final orders passed by the 1st respondent, with reference to the assessment of the years 2001-02 and 2002-03.

2. Though the name of the petitioner has been printed in the cause list, there is no representation for him either in person or through counsel.

3. The petitioner is M/s. Rukma Industries Limited, which was amalgamated/merged with M/s. Surana Corporation Ltd., as per the scheme of amalgamation order passed by the Hon'ble High Court in C.P.No.95 to 97 of 2004, dated 07.07.2004 and M/s. Rukma Industries Limited ceased to exist. The fact regarding the amalgamation was intimated to the 1st respondent, by the petitioner, on 07.09.2004. In spite of the fact, an information was provided, the 1st respondent issued notice and thereafter passed the impugned orders in the name of M/s. Rukma Industries Limited, which is not in existence as on date. However, admittedly, the orders impugned are the original assessment orders, which are appealable under the provisions of the Act. The orders impugned itself states that the appeal against the order lies before the Appellate Deputy Commissioner (CT), within 30 days of receipt of the copy of the order. The fact regarding the intimation provided by the petitioner and the name which was existing in the records of the respondents are to be verified and accordingly, a decision is to be taken by the competent authority. Such disputed facts cannot be adjudicated in a Writ proceedings under Article 226 of the Constitution of India. All such disputes are to be adjudicated with reference to the documents and evidences made available on record and the parties are bound to prefer an appeal for effective adjudication of these issues.

4. Preferring an appeal is the rule. Entertaining a Writ Petition before exhausting the appellate remedy is an exception. Undoubtedly, writ proceedings may be entertained before exhausting the appellate remedy. However, it is to be ensured that there is an imminent threat or gross injustice warranting urgent relief to be granted. Mere violation of principles of natural justice is insufficient to entertain a writ proceedings under Article 226 of the Constitution of India, as every Writ Petition is filed based on one or the other ground stating that the principles of natural justice is violated or statutory requirements are not complied with or there is an illegality or otherwise. Thus, dispensing with an appellate remedy is to be granted cautiously in view of the fact that the very purpose and



object of legislation providing an appellate remedy cannot be diluted nor the benefit be denied to the aggrieved person to exhaust the same. The statutory appellate authorities are the final fact finding authorities. Thus, the finding to be made by such appellate authorities with reference to the documents and evidences are of paramount importance for the purpose of exercise of judicial review by the High Court under Article 226 of the Constitution of India.

5.The power of judicial review of the High Court under Article 226 of the Constitution of India is to scrutinize the processes through which a decision is taken by the competent authority by following the procedures as contemplated, but not the decision itself. Therefore, the routine entertainment of a Writ Petition by dispensing with appellate remedy is not preferable and such an exercise would cause injury to the institutional hierarchy and the importance attached to such appellate institutions. The appellate institutions provided under the statute at no circumstances be undermined by the higher Courts. The appellate forums are the final fact finding authorities and more so, possessing expertise in a particular field. Thus, the finding of such appellate forums would be a valuable assistance for the purpose of exercise of judicial review by the High Court under Article 226 of the Constitution of India. The High Court cannot conduct a roving enquiry with reference to the facts and circumstances based on the documents and evidences. Based on the mere affidavits filed by the litigants, the disputed facts cannot be concluded. Thus, the importance of fact finding by the appellate forums is of more value for the purpose of providing complete justice to the parties approaching the Court of law.

6.The point of delay may be an acceptable ground for the purpose of entertaining a Writ Petition. The practise of filing the Writ Petition without exhausting the statutory remedies are in ascending mode and such Writ Petitions are filed with a view to avoid pre-deposits to be made in statutory appeals and on the ground that the appellate remedies are time consuming.

7.In view of the facts and circumstances, the petitioner is at liberty to prefer an appeal before the respondent, within a period of four weeks from the date of receipt of a copy of this order, in the prescribed format and complying with the provisions of the Acts and rules. In the event of receiving any such appeal from the petitioner, the appellate authority shall consider the same, on merits and in accordance with law, and pass final orders by affording opportunity to the writ petitioner, as expeditiously as possible.



With this direction, the Writ Petitions stand disposed of.
No costs. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Assistant Commissioner (CT) (FAC),
Tondiarpet Assessment Circle,
IV Floor, Kuralagam Annexe,
Chennai 600 108.
2. The Section Officer,
English Records Section,
High Court, Madras.

+1 CC to The Special Government Pleader(Taxes), Sr 33263.

W.P.Nos.14501 & 14502 of 2013

GSM(CO)
LS(03/08/2021)