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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.16294 to 16297 of 2013

and

M.P.Nos.1, 1 & 1 of 2013

M/s.Moa Engineering Pvt. Ltd.,
Rep., by its Director,
Flat No.11, Block No.1,
Swathi Tezas, Padmini Garden,
Mount, Nandambakkam, Chennai-89.

..Petitioner in all W.Ps.

-vs-

1.The State of Tamil Nadu,
Rep., by its Secretary,
CT & RE Department,
Fort St. George, Chennai.

2.The Assistant Commissioner (CT),
Alandur Assessment Circle,
Chennai-16.

..Respondents in all W.Ps.

Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the impugned proceedings of the second respondent in TIN/33500844541/2009-10, TIN/33500844541/2010-11, TIN/33500844541/2011-12 and TIN/33500844541/2008-09 dated 28.03.2013 respectively and quash the same as passed violating the principles of natural justice and also contrary to the judgment of the Hon'ble Supreme Court in the case of State of Maharashtra vs. Suresh Trading Company reported in 109 STC 439 followed by this Court in Writ Petition No.12305/2012 and batch of cases.

W.P.Nos.16294 to 16296/2013 and in W.P.Nos.16297/2013:

To direct the Second Respondent to pass a fresh assessment order adjusting the carry forward ITC of Rs. 2,55,346/- reflecting in the monthly return filed for the month of January 2009 after providing a personal hearing to the Petitioner to explain the case to the Second Respondent with relevant records.

For Petitioner : Mr.P.Rajkumar
(In all W.Ps.)



For Respondents : Mr.V.Veluchamy,
(In all W.Ps.) Government Advocate

COMMON ORDER

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The assessment orders passed by the second respondent in proceedings dated 28.03.2013, for the assessment years 2008-09 to 2011-12 are under challenge in these writ petitions.

2.The learned counsel for the petitioner reiterated that the Assessing Authority passed the assessment orders without providing an opportunity of personal hearing to the petitioner. The petitioner made a specific request for personal hearing in order to defend their case. However, no such opportunity was granted. It is an admitted fact that the Assessing Authority has granted certain benefits in favour of the petitioner and the other benefits sought for were rejected.

3.Under these circumstances, this Court is of the opinion that if at all the petitioner is aggrieved with regard to certain reliefs, which all are not granted, file an appeal for redressal of the grievances. The petitioner contends that certain benefits are admittedly granted. Regarding those benefits, the authorities have considered the facts. With regard to the other benefits, they have not considered. Such a contra stand deserves no adjudication on merits in a writ proceedings. Contrarily, the petitioner has to prefer an appeal before the appellate authority for adjudication of facts and circumstances based on the issues raised.

4.High Court cannot conduct a roving enquiry regarding the disputed facts and circumstances, which all are to be done by scrutinizing the documents and evidences. The business transactions, intricacies, evasion of taxes and nature of transactions are to be considered with reference to the provisions of the Act and Rules. Such an exercise cannot be done by the High Court in a writ proceedings. It is pertinent to note that the calculated way of dealing with business transactions by the traders are to be considered with an expertise and the officials competent, in this regard, must be allowed to scrutinise the documents in detail, form an opinion and take a decision and thereafter, the person aggrieved has to prefer an appeal, as the appellate authority is the final fact finding authority. Thus, the findings of the appellate authority as well as the original authority are of paramount importance for the purpose of dealing with the issues by the High Court for exercising the power of judicial review under Article 226 of the Constitution of India. In other words, findings of the original authority as well as the appellate authority would be of greater assistance to the High Court for



effective disposal of the writ petitions and for providing complete justice to the parties. In the event of dispensing with the appeal remedy on frivolous grounds, the aggrieved persons are also deprived of their opportunity to adjudicate issues before the appellate authorities. Thus, it is not preferable to encourage by dispensing with the appellate remedy, which all are provided under the statute. In the present case, the grievances as raised as well as the grounds put forth are to be considered by the appellate authority with reference to the facts as well as the documents in original.

5.Exhausting the appeal remedy is the rule. Dispensing with the appellate remedy is an exception. Power of discretion is to be exercised discretely only if there is an imminent urgency or damage, if any, caused or there is any threat, which cannot be compensated then alone, the extraordinary power may be invoked for the purpose of granting relief by dispensing with the appellate remedy.

6.Power of judicial review of the High Court under Article 226 of the Constitution of India is to scrutinise the processes and the procedures adopted by the competent authorities for arriving a particular decision in accordance with law, but not the decision itself. Thus, the High Court cannot entertain an adjudicative process regarding the mixed question of fact and law with reference to the documents and evidences in original. High Court cannot resolve the disputed issues between the parties only based on the affidavits filed in the writ petitions. There is a possibility of omissions and commissions. Thus, adjudication before the appellate authority with reference to such disputed findings of the original authority would be of greater importance.

7.This being the factum, exhausting the appellate remedy is imminent and only thereafter, based on the findings of the appellate authority, final decision may be taken. In view of the facts and circumstances, the petitioner is at liberty to prefer an appeal in a prescribed format and by complying with the requirements before the jurisdictional appellate authority within a period of four weeks from the date of receipt of a copy of this order and in the event of preferring any such appeal by the petitioner, the appellate authority is empowered to entertain the same and adjudicate the issues on merits and in accordance with law and by affording opportunity to the writ petitioner and dispose of the appeal as expeditiously as possible.



With the above observations, these writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

abr
To

- 1.The Secretary,
The State of Tamil Nadu,
CT & RE Department,
Fort St. George, Chennai.
- 2.The Assistant Commissioner (CT),
Alandur Assessment Circle,
Chennai-16.

Copy to
The Section Officer
ER Section(Writ)
High Court, Madras 104.

+1 CC to The Special Government Pleader sr 34073.

W.P.Nos.16294 to 16297 of 2013

VSNII (CO)
SP(13/08/2021)