IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Ms.Justice R.N.MANJULA

W.A.No.686 of 2021
and
C.M.P.No.3822 of 2021

Tvl. Sakthi Vinayaga Spinning
Mills Pvt. Ltd., represented by
M.Sekar, Managing Director,
No.4/4A-1B, Koorasampatty (Village)
Samalpatty - 635 306.
Uthangarai (PO & Taluk)
Krishnagiri District. ...Appellant

Vs

The Commercial Tax Officer,
Harur Assessment Circle,
Harur. ...Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 03.11.2020 passed in W.P.No.23315 of 2012.

W.P.No.23315 of 2012:

Writ Petition filed under article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the file of the Respondent in TIN/Year 33923342060/2010-2011 dated 30.07.2012 and quash the same as being not in accordance with Section 22(2) of the TNVAT Act 2006.

For Appellant: Mr.D.Vijayakumar
for Mr.R.Senniappan

For Respondent:Mr.Mohammed Shaffiq, Spl. GP

JUDGMENT
(Delivered by T.S.Sivagnanam,J)

We have heard Mr.D.Vijayakumar, learned counsel appearing for Mr.R.Senniappan, learned counsel for the appellant and Mr.Mohammed Shaffiq, learned Special Government Pleader appearing for the respondent.

2. The appellant is aggrieved by the order passed in the writ petition in W.P.No.23315 of 2021 filed by them challenging the assessment order passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 ('TNVAT Act' for brevity) for the year 2010-11 dated 30.07.2012.

3. The writ petition was filed in the year 2012 and it appears that an interim order was granted and the writ petition was dismissed by the impugned order dated 03.11.2020 on two grounds. The first ground was that the appellant should avail the alternative remedy provided under the Act and cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India in view of the decision of the Hon'ble Supreme Court in the case of Assistant Collector of Central Excise Vs. Dunlop India Limited [(1985) 1 SCC 260]. The second ground on which the Writ Court was not inclined to entertain the writ petition was on the ground that from the assessment order, it is seen that the amount of tax payable by the appellant has been determined accepting the return submitted by the appellant. Though such finding was given, the learned Single Bench observed that the appellant is not precluded from raising all contentions by filing an appeal and therefore, the Court does not express any view on the correctness or otherwise on the merits of the controversy involved in the case.

4. As could be seen from the assessment order dated 30.07.2012, the Assessing Officer has extracted the monthly returns filed by the appellant under Section 21 of the TNVAT Act for the year under consideration. The Assessing Officer has also observed that the return has been accepted as provided under Section 22(2) and proceeded to assess the dealer. The relevant column of the assessment order is extracted hereunder:

> "Accepting the return as provided u/s 22(2) of the Tamil Nadu Value Added Tax Act, 2006, I assess the dealer as below:

Total Turnover determined	Rs.182910853
Taxable Turnover determined	Rs.181760293
Tax Due	Rs.4772010
Tax Paid	Rs.3555169
Balance (-)	Rs.1216842"

5. As could be seen from the above assessment order, there is a demand of balance tax of Rs.12,16,842/-, This demand is made after giving credit to the tax, which has been paid by the appellant, namely Rs.35,55,169/- and the total tax due has been determined at Rs.47,72,010/- in terms of the return filed by the dealer.

6. Thus, apparently, it appears to be an order under Sub-Section 2 of Section 22 of the Act. But, on a closure perusal, we find that there is a demand raised on the appellant and this can be done by the Assessing Officer by invoking Sub-Section 4 of Section 22. In Sub-Section 4, there are as many as three contingencies, which have been provided for. The first being, where no return is submitted by the dealer, which is not the case of the appellant herein. Secondly, if the return filed is incomplete or incorrect, there is no such allegation made against the appellant. The third situation is if it is not accompanied with any documents prescribed or proof of payment of tax, there is no allegation that the appellant did not produce the documents prescribed, but the proof of payment of the entire tax as assessed by the appellant has not been produced, which is evident from the demand raised on the appellant and consequently, the assessment cannot be treated as an assessment under Section 22(2) of the Act. If such is the case, the Assessing Officer is entitled to make such enquiry, as it may consider necessary, and assess the dealer to the best of its judgment subject to the conditions as may be prescribed after the completion of that year.

7. The proviso under Sub-Section 4 of Section 22 states that before taking action under Sub-Section 4, the dealer shall be given an opportunity of being heard. This has not been done in the instant case and therefore, the assessment order is in violation of the principles of natural justice and on that ground, the Writ Court would be entitled to entertain a challenge to the assessment order, though an appeal remedy has been provided as it is one of the exceptions, which has been carved out from the self-imposed restriction of declining to entertain writ petitions challenging the assessment orders, where efficacious alternative remedy is available.

8. Thus, for the above reasons, the writ appeal is allowed and the order passed in the writ petition is set aside and the matter is remanded back to the respondent, who shall issue a notice to the appellant under Section 22(4) of the Act within a period of two weeks from the date of receipt of a copy of this judgment. The respondent shall also afford an opportunity to the appellant to submit their objections and after affording an opportunity of personal hearing, the respondent shall redo the assessment in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

hvk
To

The Commercial Tax Officer,
Harur Assessment Circle,
Harur.

+1 CC to Mr.R.Senniappan, Advocate sr 16563.
+1 CC to The Special Government Pleader (T) sr 16130.

W.A.No.686 of 2021
and
C.M.P.No.3822 of 2021

AD(CO)
SP(15/04/2021)