

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 Nos.794 & 797 of 2021
and CMP.Nos.4279 & 4334 of 2021

Mahindra & Mahindra Ltd., rep.
By Shri R.K.Sairam, Manager,
CI&S Accounts-Admn.,
Manindra Towers,
1st Floor, Patullos Road,
Chennai-600 002.

...Appellant/Petitioner in both Appeals

Vs

1. The Deputy Commissioner (CT)-
II, Large Taxpayers Unit,
Chennai-8.

2. The Standard Chartered Bank,
19, Rajaji Salai,
Chennai-1

...Respondents/Respondents in both Appeals

APPEALS under Clause 15 of the Letters Patent against the common order dated 19.11.2020 made respectively in W.P.Nos.33878 and 33879 of 2015.

Prayer in W.P.No.33878 of 2015:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari, calling for the records in Order CST-32911/2008-09 dated 30.01.2014 passed by the 1st Respondent and the consequential Garnishee order in TIN 33510640011 dated 07.10.2015 issued by the 1st Respondent to the petitioners banker i.e Standard Chartered Bank Chennai-01 and quash the same as arbitrary and illegal.

Prayer in W.P.No.33879 of 2015:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari, calling for the records in Order CST-32911/2013-14 dated 16.09.2014 passed by the 1st Respondent and the consequential Garnishee order in TIN 33510640011 dated 07.10.2015 issued by the 1st Respondent to the petitioners banker i.e Standard Chartered Bank, Chennai-600 001 and quash the same as arbitrary and illegal or pass such further or other as arbitrary and illegal.

For Appellant : Mr.Joseph Prabhakar (in both Appeals)
For Respondent-1 : Mrs.G.Dhanamadhri, GA(T)
(in both Appeals)

COMMON JUDGMENT
(Judgment was delivered by T.S.SIVAGNANAM,J)

We have elaborately heard Mr.Joseph Prabhakar, learned counsel for the appellant and Mrs.G.Dhanamadhri, learned Government Advocate (Taxes) accepting notice for the first respondent. In the light of the order we propose to pass, the writ appeals are take up for final disposal without ordering notice to the second respondent.

2. The writ appeals, filed by the dealer, are directed against the common order dated 19.11.2020 made respectively in W.P.Nos.33878 and 33879 of 2015.

3. The learned counsel on either side submit that the relief sought for in these writ appeals is squarely covered by the decision rendered by us in W.A.No.493 of 2021 dated 18.2.2021 in the dealer's own case.

4. The relevant portions in the said decision rendered by us 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."

5. 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 common impugned order.

6. In the light of the said decision, the writ appeals are allowed and the common impugned order passed by the learned Single Judge is set aside. The orders levying penalty both (i) dated 30.1.2014 and (ii) dated 16.9.2014 as well as the consequential garnishee orders dated 07.10.2015 are set aside. Consequently, the matter is remanded to the Assessing Officer for a fresh consideration. 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 CMPs are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Deputy Commissioner (CT)-II,
Large Tax Payers Unit, Chennai-8.

2.The Standard Chartered Bank, Chennai-1.

+1cc to the Government Pleader, S.R.No.15721.

W.A.Nos.794 & 797 of 2021 &
CMP.Nos.4279 & 4334 of 2021

RP(CO)
CSR 31.03.2021