IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.22700 of 2011

& M.P.No.1 of 2011

M/s.Vinoth Agencies,
Represented by its Proprietor,
No.32/3, Tiruvellore Road,
Uthukottai 602 026. ..Petitioner

Vs.

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

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the impugned proceedings of the respondent issued in TIN33221720217/2009-10 dated 21.04.2011 and quash the same as the addition of the income received from the vendors through credit notes to the sales turnover of the petitioner and the tax levied on the same is untenable in law and also without jurisdiction.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.V.Veluchamy (Government Advocate)

ORDER

The Revised proceedings of the Commercial Tax Officer for the year 2009-10 in the matter of deviation of proposal is under challenge in the present Writ Petition.

2.The petitioner is dealer in cement, pesticides, seeds and fertilizers and registered dealer on the file of the respondent, under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as, 'the TNVAT Act') and under the Central Sales Tax Act, 1956 (hereinafter referred to as, 'the CST Act'). The petitioner filed his monthly returns for the Assessment Years 2007-08, 2008-09 and 2009-10, declaring the total and taxable turnovers for the Assessment Years based on sales invoices issued and also indicating the Input Tax Credit availed/adjusted towards VAT liability for the year.

3.The petitioner states that once the Assessment Year is over, then it is mandatory that the Assessing Officer has to accept the returns as such and pass an order on self assessment basis in accordance with Section 22(2) of the TNVAT Act. In respect of the Assessment Year 2007-08, the original assessment order under Section 22(2) of the TNVAT Act was passed on 12.04.2010. In respect of the Assessment Year 2008-09, the original assessment order under Section 22(2) of the TNVAT Act was passed on 16.04.2010. In respect of the Assessment Year 2009-10, the same was passed on 13.01.2011.

4.The petitioner was issued with a notice stating that the authorities have proposed to revise the accounts of the dealer for respective Assessment Years under Section 27(1)a of the TNVAT Act, 2006. The petitioner was provided with an opportunity to submit its objections for the proposal for reversing the accounts of the dealer. The petitioner submitted their objections and thereafter, the impugned order has been passed in the present case. The impugned order of rejection of deviation of proposal is under challenge in the present Writ Petition. The deviation was made pursuant to the inspection conducted by the Enforcement Wing of the Commercial Taxes Department, in the business premises of the petitioner. This being the factum, this Court is of the considered opinion that the order impugned dated 21.04.2011, which is appealable is to be taken by way of an appeal by the petitioner before competent appellate authority. Admittedly, the petitioner has not preferred an appeal and has chosen to file the present Writ Petition.

5.This Court is of the considered opinion that the impugned order reveals that the petitioner was originally under the TNVAT Act. The total and taxable turn over of Rs.5,78,40,317/- and Rs.1,43,57,393/-. The Enforcement Official, in their report dated 03.11.2010, stated that the income of Rs.5,52,685/- through credit notes and taxable @ 12.5%. Pursuant to the report of the Enforcement Officials, the competent authority determined to revise the assessment and the said assessment is made based on the files as well as the inspection conducted. Verification of the files, reports, etc., cannot be done by this Court with reference to the original proceedings, which is impugned in the present Writ Petition. If all any discrepancy or errors or non-adherence of the principles settled by the Courts, the petitioner is bound to prefer an appeal. The appellate authority is the final fact finding authority. More specifically in the present case, the impugned order has been passed pursuant to the report submitted by the Enforcement Wing of the Commercial Tax

Department. Thus, verification of the original records are vital for the purpose of deciding the issues and such an exercise cannot be done by the High Court under Article 226 of the Constitution of India. What is the business turn over determined by the authorities and the dispute with reference to the issues are to be considered with reference to the original files.

6.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.

7.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.

8.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.

9.In view of the facts and circumstances, the petitioner is at liberty to prefer an appeal to the appellate authority under the provisions of the Act, in the prescribed format and by complying with the provisions, within a period of four weeks from the date of receipt of a copy of this order. In the event of filing any appeal, the appellate authority shall condone the delay, if any, and decide the issue on merits and in accordance with law, by affording opportunity to the writ petitioner. The petitioner is at liberty to submit all the documents, objections and the judgments relied upon, to the appellate authority, enabling them to consider and pass final orders, as expeditiously as possible.

10.With these directions, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

gsa

To

The Commercial Tax Officer,
Thiruvellore Assessment Circle,
Thiruvellore.

+1cc to Mr.P.Rajkumar, Advocate, S.R.No.32394
+1cc to the Government Pleader, S.R.No.32694

W.P.No.22700 of 2011

PCH(CO)
SB(26/07/2021)