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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P.Nos.21476 to 21478 of 2005

Tvl Shanti Gears Ltd.,
304-4, Trichy Road, Singanallur,
Coimbatore. ... Petitioner in all the writ petitions

Vs.

1.Assistant Commissioner (CT)
Fast Track Assessment Circle-I
Coimbatore.

2.The Special Commissioner &
Commissioner of Commercial Taxes
Chepauk, Chennai - 600 005. ... Respondents in all the writ petitions

Prayer in W.P.No.21476 of 2005 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of the case on the file of the first respondent in CST 288324/1998-1999 dated 10.5.2005 and quash the same.

Prayer in W.P.No.21477 of 2005 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of the case on the file of the first respondent in CST 288324/1999-2000 dated 10.5.2005 and quash the same.

Prayer in W.P.No.21478 of 2005 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration to declare the circular issued by the second respondent in Acts Cell III/43921/93 dated 29.4.1993 as violative of Sec 8(2) of the Central Sales Tax Act 1956.

For Petitioner : M/s.Lakshmi Sriram
in all the writ petitions

For R1 and R2 : Mr.V.Nanmaran
Government Advocate

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C O M M O N O R D E R

These writ petitions have been filed challenging the assessment orders, dated 10.05.2005, passed by the 1st respondent, and also to declare the circular issued by the 2nd respondent in Acts Cell III/43921/93, dated 29.04.1993, as violative of Section 8(2) of the Central Sales Tax Act, 1956 ("CST Act" for brevity).

2.The learned counsel appearing on behalf of the petitioner mainly contended that the petitioner is not liable to pay the tax as claimed by the respondent. The impugned assessment orders passed by the respondent are in violation of the statutory provisions as well as the circular issued by the Department. The contention of the petitioner is that they have already paid tax by filing appropriate C-Forms under Section 8(1) of the CST Act, and with reference to Section 8 (2) also, the petitioner have cleared the Tax, and in fact, the petitioner is entitled for refund of tax paid in excess. However, contrary to the facts and circumstances and in violation of the provisions of the Act, the impugned orders are passed.

3.This Court is conscious of the fact that the impugned orders were passed in the year 2005, and the writ petitions filed in the year 2005 are kept pending for the past about 15 years. It is unfortunate that the matters are delayed on account of various reasons. This Court made an attempt to resolve the issues by hearing the parties, however, certain intricacies with reference to the facts and circumstances require an adjudication by the competent authority and such an adjudication cannot be done elaborately in a writ proceedings under Article 226 of the Constitution of India. Verification of records and documents are necessary for the purpose of resolving the issues raised by the writ petitioner. Thus, this Court forms an opinion that the matter is to be taken up by way of appeal by the writ petitioner for the purpose of redressing the grievances.

4.Undoubtedly, statutory appellate remedy provided is to be exhausted. Appeal remedy is efficacious and the Appellate Authority is the final fact finding authority. The findings of the Appellate Authority would be of more assistance to the High Court for the purpose of exercise of judicial review under Article 226 of the Constitution of India. Contrarily, disputed facts cannot be adjudicated in a writ proceedings and there is a possibility of error in view of the fact that the findings are to be given in a writ proceedings only based on the affidavits and the photocopies of the limited documents enclosed by the parties. In this view of the matter, this Court is of the opinion that, in all circumstances, the parties are expected to exhaust the appeal remedy provided under the Statute. The legislative intention to contemplate

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such appeals have a definite purpose, and thus, the rule is to prefer an appeal, and entertaining a writ petition can be done only under extraordinary circumstances where the damage, if any, caused cannot be compensated or in need of urgency and not otherwise.

5.These being the principles to be followed, the writ petitioner is at liberty to prefer an appeal within a period of four weeks from the date of receipt of a copy of this order in a prescribed format and by complying with the provisions, and in the event of receiving any appeal, the competent Appellate Authority shall entertain the appeal by condoning the delay and dispose of the same on merits and in accordance with law by affording opportunity to all the parties concerned. The said exercise is directed to be done within a period of twelve weeks from the date of receipt of a copy of the appeal from the petitioner.

6.With these directions, these writ petitions stand disposed of. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Assistant Commissioner (CT)
Fast Track Assessment Circle-I
Coimbatore.

2.The Special Commissioner &
Commissioner of Commercial Taxes
Chepauk, Chennai - 600 005.

+3ccs to M/s.Lakshmi Sriram,Advocate, SR No.31044
+1CC to Special Government Pleader, Advocate SR No.31104

W.P.Nos.21476 to 21478 of 2005

JPL (CO)
B.VC (02/08/2021)

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