IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 29.06.2021
CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.Nos.23085 to 23087 of 2015
and
M.P.No.1 of 2015 (In each W.P.)

Tvl.Sri Nivaasam Associates,
Rep., by its Proprietor,
No.12/20, Mangesh Street,
T.Nagar, Chennai-600 017. .. Petitioner in all W.Ps.

-vs-

1.The State of Tamil Nadu, Rep., by
The Secretary to Government of Tamil Nadu,
Department of Commercial Taxes,
Secretariat, Fort St. George, Chennai-600 009.

2.The Commercial Tax Officer,
Nandanam Assessment Circle,
Chennai-600 028. .. Respondents in all W.Ps.

Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in the impugned orders in TIN No.33411542748/2011-12, TIN No.33411542748/2012-13 and TIN No.33411542748/2013-14 dated 22.05.2015 and quash the same and further direct the respondents to assess the sale of pre-recorded DVDs and CDs by the petitioner under Entry 68(5)(d) of Part-B to the First Schedule of the TNVAT Act.

For Petitioner : Mr.V.S.Manoj
(In all W.Ps.)

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

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COMMON ORDER

The impugned orders dated 22.05.2015, passed by the Assessing Authority, viz., the Commercial Tax Officer, Nandanam Assessment Circle under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as “the TNVAT Act”) are under challenge in the present writ petitions.

2.The learned counsel for the petitioner reiterated that the Assessing Officer has not applied his mind with reference to the application of the judgments of the Hon'ble Supreme Court of India and thus, the impugned orders are liable to be set aside. The clarificatory letters relied on by the petitioner have also not been considered by the Assessing Officer while passing the impugned orders of assessment. The learned counsel for the petitioner, at the outset, contended that the orders are cryptic and passed with non-application of mind. Thus, the writ petitions are to be allowed.

3.Perusal of the impugned orders dated 22.05.2015, would reveal that the Assessing Authority considered certain aspects and passed the orders. What are all the relevant factors and the grounds raised and if all the grounds are met with by the Assessing Officer, the same need not be looked into by the High Court in a writ proceedings, as appeal provisions are available under the Act for redressal of grievances. Appellate remedy cannot be dispensed with in a routine manner by the High Court. Appellate remedies are provided in order to redress the grievances and more specifically, the appellate authorities are the final fact finding authorities. 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.

4.The Power of judicial review 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. Therefore, non-consideration of certain grounds, judgments or otherwise may be a good ground for filing an appeal by the petitioner, but not certainly a writ proceedings under Article 226 of the Constitution of India, as the High Court cannot conduct a roving enquiry with reference to the disputed facts and circumstances. 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.

5.Exhausting the appellate remedy is the rule and entertaining a writ petition is only 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. All the writ petitions filed, merely on the ground of non-consideration of certain grounds or judgments, cannot be brought within the ambit of exception. Thus, the petitioner has to exhaust the appellate remedy as contemplated under Section 51 of the TNVAT Act. Section 51 provides “Appeal to Appellate Deputy Commissioner”; Section 58 provides “Appeal to Appellate Tribunal”; Section 59 contemplates “Appeal to the High Court”; and Section 60 denotes “Revision by the High Court”, as the case may be. Therefore, the appellate remedy, as applicable in the case of the petitioner, is to be exhausted by following the procedures contemplated.

6.In view of the above, the petitioner is at liberty to prefer an appeal by following the procedures as contemplated within a period of two weeks from the date of receipt of a copy of this order and if any such appeal is filed by the petitioner, the appellate authority is directed to entertain the appeal by condoning the delay, if any, and dispose of the same on merits and in accordance with law by affording opportunity to the petitioner.

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

Sd/-
Assistant Registrar(CS VIII)

//True Copy// Sub Assistant Registrar

abr
To

1.The Secretary to Government of Tamil Nadu,
The State of Tamil Nadu,
Department of Commercial Taxes,
Secretariat, Fort St. George,Chennai-600 009.

2.The Commercial Tax Officer,
Nandanam Assessment Circle,Chennai-600 028.
+1cc to Mr.K.Vaitheeswaran , Advocate SR.No. 30364
+1 cc to Government Pleader Sr.No.30454

W.P.Nos.23085 to 23087 of 2015

PCH(CO)
A.SK(02.08.2021)