IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.27180 of 2012
& M.P.No.1 of 2012

Tvl. Jayalakshmi & Co.,
Represented by its Partner,
P.Selvakumar,
S.F.No.68/345, Madavi Road,
Essanai, Perambalur District. ..Petitioner

Vs.

1.The State of Tamil Nadu,
rep. By the Secretary to Government,
Commercial Taxes & Registration Department,
Fort St.George, Chennai.

2.The Assistant Commissioner (C.T.),
Ariyalur Assessment Circle (FAC),
Ariyalur. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the files of the 2nd respondent in TN.Entry Tax Asst.1/2005-2006/(TNGST.3602066/2005-2006) dated 31.08.2012 and quash the same as being contrary to the principle laid down by this Court in the judgment reported in (2008) 13 VST 390 (Mds) (R.Gandhi Vs. State of Tamil Nadu and others) and that of the principle laid down by this Court in the judgment reported in (2010) 27 VST 192 (State of Tamil Nadu Vs. Arihant Plastic House).

For Petitioner : Mr.R.Senniappan

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

ORDER

The order of assessment passed by the 2nd respondent, in proceedings dated 31.08.2012, is under challenge in the present Writ Petition.

2.The petitioner has chosen to file the present Writ Petition merely relying on the principles laid down by this Court in the judgment reported in 2008 13 VST 390 (Madras) in the case of R.Gandhi Vs. Tamil Nadu and others.

3.However, the fact remains that the impugned order is an assessment order, which is an appealable one under the provisions of the Act. Admittedly, the petitioner has not exhausted the statutory appeal remedy contemplated and this Court is of the considered opinion that with reference to the disputed facts, an adjudication before the appellate authority is of paramount importance. Exhausting the appeal is the rule to be followed, as the appellate authority is the final fact finding authority. The original proceedings passed by the competent authority cannot be tested by the High Court, in view of the fact that the disputed facts are to be considered with reference to the original files and the evidences filed. Such an exercise cannot be done by the High Court and the trained officials, including the appellate authority, must be allowed to exercise their power as an appellate authority for the purpose of scrutinising the documents and evidences and to make a finding in this regard. The findings of the appellate authority would be of greater assistance to the High Court for the purpose of exercise of the power of judicial review in an effective manner. Therefore, the importance of exhausting the appellate remedy at no circumstances be undermined. The legislative intention for providing an appeal in the statute is to ensure that the grievances of the aggrieved persons are redressed by following the procedures and by applying the principles laid down by the Courts. When the appellate remedy is efficacious and the procedures are also contemplated, then the aggrieved persons need not be deprived of the benefit of appeal for the purpose of redressing their grievances in accordance with law.

4.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.

5.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.

6.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.

7.In view of the facts and circumstances, the petitioner is at liberty to prefer an appeal, before the jurisdictional appellate authority, within a period of four weeks from the date of receipt of a copy of this order, in the prescribed format and complying with the provisions of the Acts and rules and in the event of receiving any such appeal from the petitioner, the appellate authority shall consider the same, on merits and in accordance with law, and pass final orders by affording opportunity to the writ petitioner, as expeditiously as possible, and preferably, within a period of three months thereafter.

With this direction, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
State of Tamil Nadu,
Commercial Taxes & Registration Department,
Fort St.George, Chennai.

2.The Assistant Commissioner (C.T.),
Ariyalur Assessment Circle (FAC),
Ariyalur.

+1cc to Mr.R.Senniappan, Advocate SR.No.32657

+1cc to Government Pleader SR.No.32695

W.P.No.27180 of 2012

PCH(CO)
GMY(06/08/2021)