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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.27483 to 27485 of 2012
& M.P.Nos.1 to 1 of 2012

Vellapally Constructions,
Represented by its Managing Partner,
Jacob Mathew,
Palghat Main Road,
Kuniamuthur, Coimbatore 641 008.

..Petitioner in all W.Ps.

Vs.

The Assistant Commissioner (CT),
Perur Assessment Circle,
Coimbatore.

..Respondent in all W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the respondent herein in TIN 33441923408/2007-08, TIN 33441923408/2008-09 and TIN 33441923408/2009-10, dated 20.09.2012 and to quash the same.

(In all W.Ps.)

For Petitioner : Mr.N.Inbarajan

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

C O M M O N O R D E R

The notices dated 20.09.2012, issued regarding certain defects noticed in notices are under challenge in these Writ Petitions.

2.The learned counsel for the petitioner articulated the case by stating that the authorities/respondent had pre-determined the issues by calculating the tax paid and the balance to be paid in the impugned notices. Thus, the notices itself are self-evident that such determination is made without providing an opportunity to the petitioner and therefore, the same are to be set aside.



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3.The learned counsel for the petitioner made a submission that it is an admitted fact that the petitioner had not purchased any goods from outside the State and therefore, Section 27 of the Value Added Tax Act, 2006 (hereinafter referred to as, 'the TNVAT Act'), would not be applicable in the present case. With reference to Section 6 of the TNVAT Act, it is contended that regarding civil Works Contract, 2% tax on the total contracts value of the civil works executed is to be adopted. In the present case, once the petitioner has not purchased any goods outside the State and the said factum was admitted and tax paid, there is no question of issuing show cause notices impugned, which is beyond the scope of jurisdiction conferred under the provisions of the Act and therefore, the Writ Petitions are entertainable and accordingly, the impugned notices are liable to be set aside.

4.Perusal of the impugned notices would reveal that the petitioner had filed monthly returns for the years 2007-08, 2008-09 and 2009-2010 in Form - L, paying 2% tax on the contract value received at compounded rate under Section 6 of the TNVAT Act. But the Check post movement extracts revealed that the petitioner has purchased goods from other State (Kerala) and sent goods to Kerala. Thus, the petitioner has violated the condition of Section 6 and therefore, the petitioner is liable to pay tax at appropriate rates specified in First Schedule goods on the deemed sale value, as provided under Section 5(1) relating to the business of transfer of property in goods involved in the execution of Works Contract by filing Form-I monthly returns as per Rule 8 (5) of the TNVAT Rules, 2007 instead of monthly returns in Form-L.

5.With this back ground, the respondent has proposed to arrive the deemed sale value on the interstate purchases, as stated in the notices. This Court is of the considered opinion that if a show cause notice is issued with certain particulars, then the petitioner is taking a ground that the authorities have pre-determined the issue. If such proposed details are not given in the impugned notice, then also they take a ground that in the absence of any particulars, they would not be in a position to submit their explanation/defence. This being a contradictory submissions normally made in such cases, this Court is of an opinion that wherever there is a proposal, it cannot be construed as a determination, but it is to be taken as an allegation/information for the purpose of defending the case by the aggrieved person.

6.In this backdrop, this Court is of an opinion that the proposed particulars, as narrated in the impugned notices, are only for the purpose of submitting the defence by the petitioner and enabling them to understand what reveals in the mind of the



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department and the same cannot be construed or taken as a final decision arrived. If at all the proposed calculation or determination is erroneous or not acceptable to the petitioner, they are at liberty to object the same by referring the provisions of the Act and by submitting relevant documents or evidences. It is needless to state that the respondent must always decide these issues fairly and in the manner known to law. They shall not pre-determine the issues based on the show cause notice. However, the petitioner, during the course of enquiry, is at liberty to seek the documents relied on by the respondent for the purpose of defending their case. Thus, the respondent has to conduct an enquiry by affording opportunity to the writ petitioner, with reference to the disputes raised in the impugned notices.

7. The points raised on behalf of the writ petitioner are to be urged before the competent authority. Certain disputed facts cannot be adjudicated in a writ proceedings. The learned counsel for the petitioner contended that it is an admitted fact that the petitioner has not purchased any goods outside the State. However, these factors are to be established with reference to the documents and evidences and therefore, the petitioner has to participate in the process of enquiry, for the purpose of passing final orders.

8. No writ against a show cause notice needs to be entertained in a routine manner by the High Court. A writ against the show cause notice may be entertained only on exceptional circumstances, where the notice was issued by an incompetent authority having no jurisdiction or an allegation of malafides are raised. Even in case of raising an allegation of malafides, the authority, against whom such an allegation is raised, must be impleaded as a party in the writ proceedings, in his personal capacity. Thus, the notice is to be responded, by the person concerned, for effective adjudication of the issues and the final decision is to be taken by the competent authority and thereafter, the appellate remedy, if any contemplated under the statute, are also to be exhausted before approaching the High Court by filing a Writ Petition under Article 226 of the Constitution of India.

9. Recently, in order to avoid exhausting the statutory appellate remedy and to maintain the Writ Petition, the point of jurisdiction is commonly raised. Thus, the Courts are expected to scrutinise the jurisdiction ground carefully and cautiously. Mostly such jurisdictional points are routinely raised in many Writ Petitions based on the merits of the case and related to the facts and circumstances. It is to be borne in mind that such adjudications are permissible before the appellate authority. The point of jurisdiction raised if blatant and directly hitting



the provisions of law, then alone the High Court can entertain a Writ Petition and in all other circumstances wherever there is an involvement of facts and circumstances and documents, though jurisdictional point is raised, the aggrieved person must be allowed to exhaust the statutory appellate remedy in the manner known to law. The practise of raising jurisdictional point based on the adjudication on merits is not appreciable. It is of course the legal tactics to entertain a Writ Petition without exhausting the statutory remedy provided. In such circumstances, there is a possibility of omission, commission and error in adjudication of the facts and circumstances with reference to the documents and evidences. Therefore, the importance of appellate remedy is to be consistently insisted upon for the purpose of complete justice to the litigants. Thus, it is made clear that the jurisdictional point raised in a Writ Petition directly hitting the provisions of the statutes are entertainable and wherever an adjudication of facts are involved, then such mixed question of law and facts are to be adjudicated by the appellate authority at the first instance and the final fact finding authority's opinion or findings would be of greater assistance to the High Court for effective exercise of power of judicial review conferred under Article 226 of the Constitution of India.

10. This being the principles, the petitioner is bound to exhaust the remedies available and therefore, the petitioner is at liberty to submit their objections/defence statement and explanations along with documents and evidences before the respondent, enabling them to consider the case of the petitioner. On receipt of any such objections, the defence statements from the petitioner, the respondent is directed to consider the same, afford opportunity to the writ petitioner, including personal hearing, enabling them to defend their case in the manner known to law. Thereafter, the respondent is bound to take a decision and pass orders on merits and in accordance with law. If at all the petitioner is aggrieved thereafter, they are at liberty to prefer the statutory appeal, as contemplated under the provisions of the Act.

With these directions, the Writ Petitions stand disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

gsa



To

The Assistant Commissioner (CT),
Perur Assessment Circle,
Coimbatore.

+1 cc to M/s.N.Inbarajan, Advocate Sr.No.33368

+1 cc to the Special Government Pleader, Sr.No.34075

W.P.Nos.27483 to 27485 of 2012

PMK(CO)
RVM(06/08/2021)