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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-07-2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.26731 of 2015

M/s.DLF Southern Homes Pvt Ltd.,
Represented by its Authorised Signatory,
S.No.184/1, No.31, Thazhambur Village,
Navalur,
Kanchipuram District 603 103.

... Petitioner

vs.

The Assistant Commissioner (CT),
Chengalpattu Assessment Circle,
No.15-B, First Floor,
1st Main Road,
Anna Nagar,
Chengalpattu-603 001.

... Respondent

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the respondent in the impugned order TIN No.33160742587/2010-11 dated 22.07.2015, quash the same as it is contrary to the scheme of the VAT system; arbitrary in nature and not in accordance with law laid down by this Court in the case of ICMC Corporation Ltd vs. CESTAT [(2014) 302 ELT 45] insofar as the petitioner is concerned.

For Petitioner : Mr.V.S.Manoj

For Respondent : Mr.P.Nanmaran,
Government Advocate.

O R D E R

The assessment order passed by the respondent in proceedings dated 22.07.2015, is under challenge in the present writ petition.

2. The impugned order itself reveals that a separate note is provided wherein it is categorically stated "an appeal against this order lies before the Appellate Deputy Commissioner of Commercial Taxes, Chennai (South), Chennai-600



3. The learned counsel, appearing on behalf of the petitioner, reiterated that the judgments relied on by the petitioner are not considered by the respondent and therefore, there is no deliberation in respect of merits placed by the petitioner.

5. 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.

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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.

7. 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.

8. In view of the fact that the litigants sometimes are adopting a tactical approach in a calculated manner by prolonging and protracting the proceedings, the Authorities are expected to be cautious. Undoubtedly, the judgments produced by the litigants are to be considered with reference to the facts and circumstances as well as the documents and the evidences.

9. However, the litigants as well as the learned counsel are expected to be precise in their submissions, enabling the Authorities/Courts to decide the matter as expeditiously as possible. Contrarily, on the same point, if they have produced numerous judgments and prolonged the issue, the same will not do any service to the cause of justice. Thus, it is to be noted that the respective litigants and the counsel appearing on behalf of the parties are to be precise in their submissions and submit the judgments, which all are most aptly suitable to establish their case, enabling the Authorities/Courts to consider the same.

10. This Court is of the considered opinion that on certain number of hundreds of judgments may be produced. However, the same would not be of any assistance to the Authorities or the Courts, to deal with all such judgments by forming an opinion and for passing orders. These all are the aspects, which all are to be borne in mind by the litigants as well as the respective learned counsel appearing on behalf of the parties.



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11. Therefore, this Court is of the considered opinion that the judgments, which all are apt, are to be referred and relied upon for the purpose of establishing their case and the facts in brief, are to be precise, in enabling the Authorities/Courts to decide the matter as expeditiously as possible.

12. In the present case, the importance of appellate remedy and its necessity are yet to be considered by this Court and therefore, the petitioner has to prefer an appeal and redress his grievance in the manner known to law.

13. In this view of the matter, the petitioner is at liberty to prefer an appeal in the prescribed format and by complying with the provisions of the Act and the Rules, within a period of four weeks from the date of receipt of a copy of this order. In the event of any such appeal, the Appellate Authority shall condone the delay, if any, taking into consideration the period of pendency of the appeal before this Court and dispose of the appeal on merits and in accordance with law and by affording an opportunity to the writ petitioner as expeditiously as possible.

14. With the above directions, the writ petition stands disposed of. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Svn
To

The Assistant Commissioner (CT),
Chengalpattu Assessment Circle,
No.15-B, First Floor,
1st Main Road,
Anna Nagar, Chengalpattu-603 001.

+1cc to M/s.K.Vaitheeswaran, Advocarte Sr.34716

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ajs[co]
srg 18/08/2021