IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.07.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.26925 to 26928 of 2015
and
M.P.Nos.1, 1, 1 & 1 of 2015

Mr.K.Prabhu

...Petitioner in all WPs.

Vs

1. The Commissioner of Commercial Taxes,
   Chepauk, Ezhilagam, Chennai.

2. Deputy Commercial Tax Officer (Addl.),
   Erode Rural Circle, Erode.

3. M.Govindasamy

4. M.Vijayakumar

5. M.Anandan

... Respondents in all WPs.

COMMON PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus, calling for the assessment orders bearing TIN Nos.33242905255/2011-12, 33242905255/2014-15, 33242905255/2012-13 & 33242905255/2013-14 respectively, dated 29.06.2015 on the file of the second respondent as arbitrary and to quash the same with consequential directions to the respondents 1 and 2 to act in pursuant to Sections 64(4) and 65 of the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006) in respect of Tvl. Sri Velavan Agencies business dealings of the respondents 3 to 5.

For Petitioner : Mr.P.Haribabu

For Respondents : Mr.V.Veluchamy
Government Advocate for R1 & R2
No appearance for R3 to R5

...in all Wps.

COMMON ORDER

The Original Assessment Order dated 29.06.2015 passed under Section 22 (4) of the Tamil Nadu Value Added Tax Act, is under challenge in these writ petitions.

2. The learned counsel for the petitioner reiterated that no opportunity of hearing was provided to the writ petitioner and the writ petitioner was not given sufficient opportunity even to cross-examine the witnesses. Thus, the provisions of the Act are violated and accordingly the order of assessment impugned is liable to be set aside. Referring to the Provisions of the Act, the learned counsel made a submission that the respondents are bound to provide opportunity to the writ petitioner to defend his cases. However, no such opportunity was given and, therefore, the order impugned is untenable.

3. Admittedly, the Original Assessment Order is an appealable order under the provisions of TNVAT Act, more specifically, Section 51. Section 51 contemplates appeal to the Appellate Commissioner, Section 58 provides appeal to the Appellate Tribunal and Section 59 and 60 provides appeal and revision to the High Court, respectfully as the case may be. Thus, the Statutory remedy contemplated are to be exhausted. High Court cannot adjudicate the disputed issues with reference to the documents or evidences as the Appellate Authorities are the Final Fact Finding Authorities. Thus, the petitioner has to exhaust the remedy which is efficacious.

4. As far as the opportunity which is said to be not provided to the petitioner, the order impugned indicates that the opportunity was provided to the writ petitioner and he had not co-operated by submitting his objections. The relevant finding of the order impugned are extracted hereunder:

> "The dealer in the notice was requested to pay the tax due along with interest and penalty amount proposed on or before 15.05.2015 without any omission and further delay. Before that, the dealer was afforded an opportunity of being heard in personal hearing with the Assessing Officer on 15.05.2015 and also requested to file his objections if any with documentary evidence in support of his claim within 15 days from the date of receipt of the notice and if he got failed to utilize any of the chances as aforesaid, he was strictly warned that Assessment Orders will be passed as proposed in the notice.

"The dealer who received the notice on the very same day of the notice dated 27.04.2015 in person had appeared before the Assessing Officer on 15.05.2015 neither for the purpose of being heard in personal nor for filing objections along with documentary evidence, but along with a petition seeking for adjournment of the case for 30 days (upto 14.06.2015) from the date of such petition for filing his objections or otherwise to act upon the contents of the notice dt: 27.05.2015 and requested to provide the purchase details which were stated in the notice dt: 27.04.2015. The requisition of the dealer in the adjournment petition was simply accepted by providing purchase details as requested and the time for filing his objections was extended upto 14.06.2015 but with a condition that the dealer could not seek further extension of time in future.

While so, the dealer again approached the Assessing Officer on 14.06.2015 with a petition seeking for further extension of 10 days time to file his objections since maximum of the documents were traced out and some of the documents are being traced out in order to prove his side. The requisition of the dealer was once again accepted and the time was extended upto 24.06.2015 giving 10 days time as requested in the dealer's petition. Thus, it is very clear that the dealer had been given reasonable opportunities of being heard and the time for filing objections sufficiently as per the provision laid down in section 22 (4) of the TNVAT Act 2006.

While the facts are being so, the dealer in recent days has not turned up or come forward either to file his objections or for proper payment as proposed in the notice. No request for further extension of time has been received from the dealer after expiry of the time granted to him in second adjournment.

In these circumstances and in view of the above, as an Assessing authority, in order to decide the matter on merits, I am in a situation to frame necessarily issues and accordingly the issues were framed at the time of the order."

5. In view of the fact that the petitioner had not availed all the opportunities provided by the respondents, the respondents were framed the issues and passed orders. Therefore, the mere contention raised in this regard is contrary to the findings made in the impugned order. However, writ petitioner is

of an opinion that further more opportunity is to be provided. He is at liberty to prefer an appeal in a prescribed format and by complying with the provisions of the statutes. However, the High Court adjudicate the issues on merits which requires scrutinization of documents and evidences.

6. 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.

7. 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.

8.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.

9. In view of the facts and circumstances, the petitioner is at liberty to approach the Appellate Authority for the purpose of redressing his grievances in the manner known to law. With these observations, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

Pns

To

1. The Commissioner of Commercial Taxes,
   Chepauk, Ezhilagam, Chennai.

2. Deputy Commercial Tax Officer (Addl.),
   Erode Rural Circle, Erode.

+4ccs to Mr.P.Hari Babu, Advocate, S.R.No.31928,31929,31930,31931

+1cc to the Government Pleader, S.R.No.31734

W.P.Nos.26925 to 26928 of 2015

PCH(CO)
SU(26/08/2021)