IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2021

CORAM

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

W.P.No.18110 of 2016
and
W.M.P.No.15875 of 2016

M/s.Suseela Machinery Electricals,
Rep.by its Proprietor
Mr.C.Prabala Chandra Raj,
No.79A, Lawrance Road,
Thirupapuliyur, Cuddalore – 2. ...Petitioner

Vs

The Commercial Tax Officer,
Cuddalore Town Assessment Circle,
Cuddalore. ...Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the files of the respondent in TIN. 33524380568/2011-12 dated 30.03.2016 and quash the same as illegal, arbitrary and against the principles laid down by this Hon'ble Court reported in 14 STC 694 in the case of Kather Nadar vs. State of Madras.

For Petitioner : M/s.Adithya Reddy

For Respondent : Mr.V.Veluchamy
Government Advocate

O R D E R

The Order of Assessment dated 30.03.2016, is under challenge in the present writ petition.

2.The petitioner is a registered dealer under the TN VAT Act and an Assessee on the files of the Respondent. The petitioner is a dealer in Electrical items and purchased the same from the local registered dealers.

3.The learned counsel for the petitioner contended that the Assessment Order passed by the respondent is not in consonance with the provisions of the Act as well as the factual details are not considered in its entirety. Several grounds raised in this writ petition would show that adjudication of disputed facts are required to be undertaken by the Competent Appellate Authority. The Appellate Authority is the final fact finding authority and the right of appeal to the petitioner assessee need not be denied in a routine manner. The right of appeal is important as far as the petitioner is concerned, as the Appellate Authority is exercising quasi judicial power and empowered to adjudicate both factual disputes and the legal grounds raised. Thus, the importance of appellate remedy and the legislative intention in this regard, at no circumstances be undermined. High Court cannot adjudicate the disputed facts in a writ proceedings under Article 226 of the Constitution of India.

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 Competent Appellate Authority within a period of four weeks from the date of receipt of a copy of this order, in a prescribed format and by complying with the provisions of the Statutes and Rules. In the event of receiving any such appeal, the Appellate Authority shall condone the delay, if any, taking into consideration of the pendency of the writ petition before this Court and dispose of the appeal on merits and in accordance with law and by affording opportunity to the petitioner as early as possible.

8.With these directions, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

Pns

To
The Commercial Tax Officer,
Cuddalore Town Assessment Circle,Cuddalore.

+1cc to Mr.Adithya Reddy, Advocate, S.R.No.39966
+1cc to Special Government Pleader, S.R.No.40528

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PL(CO)
RGA(02/09/2021)