IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.335 to 337 of 2012
& M.P.Nos.1 to 1 of 2012

M/s.Raj Brother,
rep. By its Proprietor Sajjan Kumar Gupta
No.84, Broadway,
Chennai 600 108. ..Petitioner in all W.Ps.

Vs.

1. The Commercial Tax Officer,
   Harbour III Assessment Circle,
   No.191, NSC Bose Road,
   Chennai 600 001.

2. Mr.C.Ramasubramaniam,
   Interim Resolution Professional,
   Raji'3B1, 3rd Floor, Gaiety Palace,
   N.1L, Blackers Road, Mount Road,
   Chennai, Tamil Nadu 600 002. ..Respondents in all W.Ps.

(R2 suo-motu impleaded as per order dated 15.07.2019
in W.P.Nos.335 to 336 of 2012)

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 1st respondent in TNGST.0040731/2000-01, TNGST.0040731/2001-02 and TNGST.0040731/2003-04, all dated 31.10.2011 and quash the same as illegal and without jurisdiction.

(In all W.Ps.)

For Petitioner : Mr.T.Pramodkumar Chopda

For Respondents : Mr.V.Veluchamy (For R1)
Government Advocate
No appearance (For R2)

COMMON ORDER

The orders of assessment passed by the 1st respondent, in proceedings dated 31.10.2011, are under challenge in these Writ Petitions.

2.The petitioner has chosen to file the present Writ Petitions on the ground that the assessment orders are passed against the provisions of the Tamil Nadu Goods and Services Tax Act, 1956 and in violation of decision of the Hon'ble Division Bench of this Court in various judgments.

3.However, the fact remains that the impugned orders are assessment orders, which are appealable 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 Petitions stand disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

gsa

To

The Commercial Tax Officer,
Harbour III Assessment Circle,
No.191, NSC Bose Road,
Chennai 600 001.

+1cc to Mr.T.Pramodkumar Chopda, Advocate, S.R.No.32501
+1cc to the Government Pleader, S.R.No.32697

W.P.Nos.335 to 337 of 2012

RK(CO)
HS(03/08/2021)