IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2021

CORAM

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

W.P.NOS.31034 TO 31038 OF 2015
AND
M.P.NOS.2, 2, 2, 2 & 2 OF 2015

S.H.V.Energy Private Limited,
rep.by its General Manager - Finance
Mr.Prateek Sinha Choudhary,
G-3,4,5 SIPCOT Industrial Estate,
Sriperumbhudhur 602 105,
Kanchipuram District. ...Petitioner in all WPs.

Vs

The Assistant Commissioner (CT),
Sriperumbhudhur Assessment Circle Station,
Varadharajapuram - 602 103 ... Respondent in all WPs.

COMMON 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 herein in TIN Nos: 33871662096/2007-2008, 33871662096/2008-2009, 33871662096/2009-2010, 33871662096/2010-2011 & 33871662096/2011-2012 respectively, dated 27.07.2015 and quash the same.

For Petitioner in all WPS : Mr.N.Sriprakash
For Respondent in all WPS : Mr.V.Veluchamy Government Advocate

COMMON ORDER

The impugned order in proceedings dated 27.07.2015, is under challenge in these writ petitions.

2. The petitioner is a Company incorporated under the Companies Act, 1956 and they are registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956 on the file of the respondent.

3. The learned counsel for the petitioner made a submission that the Form - Industrial Input Certificates were already filed before the Assessing Authority. In respect of the fact that those documents were filed by the assessee, the Authority

Competent failed to take note of the document and passed the impugned order without considering the Industrial Input Certificate, which was marked as document.

4. This Court is of the considered opinion that even in case the original authority has not considered certain grounds raised by the assessee / petitioner and if the petitioner raises a ground that there was no non-application of mind on the part of the authority competent, then also, all such grounds are to be raised in the appeal to be filed under the provisions of the Act. The Appellate Authority being a quasi-judicial authority, is empowered to adjudicate both the legal and factual grounds. Thus, the grounds for appeal regarding non-application of mind, jurisdiction coupled with facts are to be raised before the Appellate authority and the same would not constitute a ground to entertain a writ proceedings in a routine manner. Complete adjudication of factual disputes in the event of raising an allegation of non-appreciation of documents, the Appellate authority would be the appropriate authority as they are the final fact finding authority. Thus, the appeal remedy is to be exhausted in all circumstances.

5. Large number of writ petitions are filed raising point of jurisdiction. The point of jurisdiction is to be considered in two ways. Jurisdiction coupled with facts and circumstances has to be adjudicated by the Appellate Authority, based on the original documents and evidences. The authority, who issued the order impugned, if incompetent under the provisions of the Act, then the High Court may set aside the order and remand the matter back to the Authority Competent for taking decision on merits. The concept of remand is also to be exercised cautiously and in a restricted manner, so as to ensure that the Original Authority is not unnecessarily directed to re-adjudicate the issues, which were already adjudicated by such authority. Thus, remanding of a matter may be necessary in certain cases, where there was no adjudication of issues or the order impugned is cryptic. Once the orders are passed considering the issues and findings are given which would be sufficient for preferring an appeal and mere omission or commission of certain facts or non-consideration of certain grounds may not be a ground for remanding the matter back to the Original Authority. In the event of such remand, the finality to be reached is not only prolonged but protracted.

6. Recently, the writ petitions are directly filed against the orders in original with an idea to avoid pre-deposits to be made under the provisions of the Statutes or Rules. Such a ground shall not be considered by the Courts, as the legislative intention in this regard need not be diluted and the pre-deposits are prescribed with an intention to ensure that the

appeals are filed in a genuine manner and to redress the grievances. This exactly is the reason why, parties are tempted to file writ petition after writ petition, raising one or the other ground during the pendency of various proceedings, which would not only cause inconvenience but also prejudice the continuous of the proceedings to be concluded by following the provisions of the Act and Rules. Thus, such a practise cannot be encouraged by the High Courts.

7. In the event of adjudication of disputed facts by the High Court merely based on the affidavits or the selected xerox copies of the documents filed by the petitioners, this Court is afraid that there is a possibility of omission, commission and errors in appreciating certain facts and circumstances. Such an exercise needs to be avoided to the High Court in the interest of justice. Parties must be allowed to avail the valuable remedy of appeal for complete adjudication with reference to the original documents and evidences. The Appellate Authority, being the final fact finding authority, the findings therein would be of greater assistance to the High Court for the purpose of exercise of the power of judicial review conferred under Article 226 of the Constitution of India.

8. The Appellate Authorities are exercising the quasi judicial power. Thus they are empowered to adjudicate the point of law raised as well as the facts in entirety and they are empowered to take evidence, record statements etc. Thus, the importance of the appellate remedy is to be understood with reference to the legislative intention. Further the aggrieved person need not be deprived of his valuable opportunity of appeal contemplated under the Statute. In the event of entertaining a writ petition and keeping it pending for long years, the aggrieved person is also prejudiced and his opportunity of statutory remedy is denied unnecessarily.

9. In the present case, the appellate remedy is provided as under in the Act:

> Section 52 contemplates Appeal to Appellate Joint Commissioner. Section 52 (3) enumerates "in disposing of an appeal, the Appellate Deputy Commissioner may, after giving the appellant a reasonable opportunity of being heard, and for the sufficient reasons to be recorded in writing -
> (a) in the case of an order of assessment -
> (i) confirm, reduce, enhance or annul the assessment or the penalty or both;
> (ii) set aside the assessment and direct the Assistant Commissioner (Assessment) to make a fresh assessment after such further inquiry as may be

directed; or

(iii) pass such other orders as he may think fit; or

b) in the case of any other order, confirm, cancel or vary such order.

10. The scope of the powers conferred on the Appellate Joint Commissioner, needs to be considered by this Court so as to understand the importance of exhausting the appellate remedy by the aggrieved persons. Section 52 contemplates, the appellate Authority may confirm, reduce, enhance or annul the assessment or the penalty or both. The powers conferred would reveal that the Appellate Authority has got ample powers to confirm, reduce, enhance or annul the assessment.

11. Thereafter, the appeal is provided before the Tribunal. The Appellate Authority as well as the Appellate Tribunals are the expert bodies and they are competent to adjudicate the technical aspects of the tax law. Such an adjudication is not only relevance but important to settle the issues in a complete manner for the purpose of redressing the grievances of the assessee as well as the revenue.

12. This being the principles to be followed, this Court has no hesitation in forming an opinion that the petitioner has to exhaust the appellate remedy contemplated under the Act. Accordingly, the petitioner is at liberty to approach the Appellate Authority by filing an appeal 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 Act and Rules. In the event of receiving any such appeal from the petitioner, the Appellate Authority shall consider the appeal on merits and entertain the same by condoning the delay in filing and in accordance with law and by affording opportunity to the writ petitioner as contemplated under the Provisions of the Act and dispose of the same as expeditiously as possible.

13. Accordingly, these writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Pns

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Sriperumbhudhur Assessment Circle Station,
Varadharajapuram - 602 103

+1 cc to M/s.N.Inbarajan,Advocate Sr.No.34412
+1 cc to Special Government Pleader (Taxes) Sr.No.34691

W.P.Nos.31034 to 31038 of 2015
and M.P.Nos.2, 2, 2, 2 & 2 of 2015

GSM(CO)
PM(07/09/2021)