



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.08.2021

CORAM:

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

WP No.22672 of 2016

and

WMP No.19374 of 2016

Tvl.Vijay Shree Metals,
rep. By its Proprietor,
No.26/17-A, Mooker Nallamuthu Street,
Chennai - 01.

...Petitioner

Vs

The Assistant Commissioner (CT),
Broadway Assessment Circle,
Chennai - 01.

...Respondent

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records of the order of the respondent dated 31.05.2016 in TIN/33810061338/2015-16 and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondent : Mr.V.Veluchamy
Government Advocate.

O R D E R

The order dated 31.05.2016 passed by the respondent is under challenge in the present writ petition. Pursuant to the impugned order, taxable turn over is added and determined by the competent authority. Against the order passed by the original authority, appeals are contemplated under the provisions of the Tamil Nadu Value Added Tax Act. Instead of preferring an appeal, the petitioner has chosen to file the present writ petition raising factual and legal grounds. The appellate authority is the final fact finding authority and competent to adjudicate the mixed question of fact and law. The importance of adjudication of disputed facts before the appellate authority, at no circumstances be undermined. This apart, the valuable right of appeal provided to an aggrieved person under the statute, need not be taken away in a routine manner.



2. Thus, this Court is of the considered opinion that filing of an appeal is the rule. Entertaining a writ petition is only an exception. If the writ petition is filed on the ground that the authority who issued the order impugned is incompetent or having no jurisdiction under the provisions of the Act in a direct manner or when allegation of malafides are raised, then alone the writ petition needs to be entertained and in all other circumstances, the aggrieved person is bound to prefer an appeal as provided under the statute.

3. 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.

4. 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.

5. In view of the facts and circumstances, the petitioner is at liberty to prefer an appeal, as contemplated under the statute for redressal of their grievances by following the procedures. The petitioner is at liberty to prefer such appeal within a period of four weeks from the date of receipt of a copy of this order. The appellate authority in the event of receiving any appeal from the petitioner, shall entertain the same, condone the delay if any, and adjudicate the appeal on merits, in accordance with law and pass final orders, by affording opportunity to the writ petitioner, as expeditiously as possible.

6. With these directions, this Writ Petition stands disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT),
Broadway Assessment Circle,
Chennai - 01.

+1 CC to The Special Government Pleader, Sr.No. 40538.

WP No.22672 of 2016

PCH(CO)
LS(01/09/2021)