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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2021

CORAM

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

W.P.NOS.34962 & 34963 OF 2013
AND
M.P.NOS.1 & 1 OF 2013

P.K.Vaduvammal
Rep. By its Partner,
Mr.P.C.Shyamsundar ...Petitioner in both WPs

Vs

The Assistant Commissioner,
Commercial Taxes, Part Town - I,
Chennai - 600 003. ... Respondent in both WPs

PRAYER in both WPs : Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the respondent dated 18.11.2013 made in TIN.No.3360032007/2007-08 &TIN.No.3360032007/2008-09, quash the same.

For Petitioners in both WPs : Mr.S.R.Raghunathan
For Respondents in both WPs : Mr.V.Nanmaran
Government Advocate

C O M M O N O R D E R

The order dated 18.11.2013 pertaining to the Revision of Assessment is under challenge in these present writ petitions.

2. The petitioner is carrying on the business of supplying iron and steel like TMT Bars, CTD Bars and structurals to construction companies, developers, infrastructure companies and others.

3. The facts disputed require no consideration at this point of time, in view of the fact that the order impugned is appealable under the provisions of the Act. It is not in dispute that the appeal is contemplated under Section 51 of the Act before the Appellate Deputy Commissioner and Section 52 contemplates the appeal to Appellate Joint Commissioner, Section 58 provides appeal to Appellate Tribunal and Section 59 Appeal to the High Court and Section 60 Revision by High Court. When

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provisions are made available for exhausting the remedy, the importance of exhausting the appellate remedy at no circumstances be undermined by the Courts. The appellate authorities are the final fact finding authorities and the findings of the Appellate Authority would be of a greater assistance to the High Court for the purpose of exercising the power of judicial review 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

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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 fact that there is no dispute that the impugned orders are appellable under the provisions of the Act, the petitioner is at liberty to file an appeal before the jurisdictional Appellate Authority in a prescribed format and by complying with the procedures contemplated within a period of eight weeks from the date of receipt of a copy of this order. On receipt of any such appeal from the petitioner, the Appellate Authority is empowered to consider the same and dispose of the appeal on merits and by affording opportunity to the writ petitioner as expeditiously as possible.

8. With these directions, the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Pns

To

1. The Assistant Commissioner,
Commercial Taxes, Part Town – I, Chennai – 600 003.

2. The Section Officer,
Writ (ER Section), High Court, Madras-104.

(To return the Original Assessment Order)

+1cc to the Special Government Pleader(T), S.R.No.34697

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and M.P.Nos.1&1 of 2013

GPL(CO)
CS/12/08/2021

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