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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.Nos.23200 to 23203, 23766 to 23769 & 30826 to 30829 of 2016
and
W.M.P.Nos.19905 to 19908, 20353 to 20356 & 26703 to 26706 of 2016, 8129, 8146, 8148, 8149, 5023, 5028, 5030 & 5031 of 2019

W.P.Nos.23200 to 23203 of 2016 :-

M/s.SSB Industries,
Rep., by its Proprietor, Mrs.J.Aruna,
RS No.173/2A, Tindivanam (NH) Road,
(Near) Tool Plaza, Morattandy,
Aurovile Post, Vanur Taluk. .. Petitioner

-vs-

1. Commercial Tax Officer (Main),
   Tindivanam.

2. Commercial Tax Officer-IAC,
   3rd Floor, 100 Feet Road,
   Ellapillaichavady,
   Pondicherry-605 505.

3. Commercial Tax Officer,
   Tambaram Circle, Tambaram. .. Respondents

Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records on the file of the first respondent terminating in the orders in TIN 33694723806/2011-12, TIN 33694723806/2012-13, TIN 33694723806/2013-14 and TIN 33694723806/2014-15 respectively dated 23.05.2016 under Section 27 of the Tamilnadu Valude Added Tax Act, 2006.

W.P.Nos.23766 to 23769 of 2016 :-

M/s.Selva Furnitures,
Rep., by its Proprietor, Mrs.D.Kalpana,
RS No.173/2A, Tindivanam (NH) Road,
(Near) Tool Plaza, Morattandy,
Aurovile Post, Vanur Taluk. .. Petitioner

-vs-

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1. Commercial Tax Officer (Main),
   Tindivanam.

2. Commercial Tax Officer-IAC,
   3rd Floor, 100 Feet Road,
   Ellapillaichavady,
   Pondicherry-605 505. .. Respondents

Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records on the file of the first respondent terminating in the orders in TIN 33784723806/2011-12, TIN 33784723806/2012-13, TIN 33784723806/2013-14 and TIN 33784723806/2014-15 respectively dated 27.05.2016 under Section 27 of the Tamilnadu Valude Added Tax Act, 2006.

W.P.Nos.30826 to 30829 of 2016 :-

M/s.Amman Industries,
Rep., by its Proprietor, Mr.Jeethendra Patel,
RS No.173/2A, Tindivanam (NH) Road,
(Near) Tool Plaza, Morattandy,
Aurovile Post, Vanur Taluk. .. Petitioner

-vs-

1. Commercial Tax Officer (Main),
   Tindivanam.

2. Commercial Tax Officer-IAC,
   3rd Floor, 100 Feet Road,
   Ellapillaichavady,
   Pondicherry-605 505. .. Respondents

Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records on the file of the first respondent terminating in the orders in TIN 33604723807/2011-12, TIN 33604723807/2012-13, TIN 33604723807/2013-14 and TIN 33604723807/2014-15 respectively dated 25.07.2016 under Section 27 of the Tamilnadu Valude Added Tax Act, 2006.

For Petitioners : Mr.N.V.Balaji
(In all W.Ps.)

For RR1 and RR3 In W.P.Nos.23200 : Mr.V.Nanmaran
to 23203/2016, Govt. Advocate

For R1 in W.P.Nos.23766/2016
& 30826 to 30829 of 2016

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For R2 (In all W.Ps) : Ms.V.Usha,
Addl.Govt.Pleader
(Pondicherry)

COMMON ORDER

These batch of writ petitions are filed challenging the assessment orders passed by the Commercial Tax Officer, Tindivanam for the assessment years 2011-12 to 2014-15.

2.The common issue raised in all these writ petitions is that the Assessing Officer has erroneously applied the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "the TNVAT Act") and passed the assessment orders which resulted exercise of jurisdiction erroneously and thus, the petitioners are constrained to move these writ petitions.

3.The learned counsel for the petitioners, in order to substantiate the grounds, solicited the attention of this Court with reference to Section 19 of the TNVAT Act. It is contended that an amendment was issued in the Tamil Nadu Act, 13 of 2015 with effect from 29.01.2016, and the said amendment cannot be applied, as far as the impugned assessment orders in these writ petitions are concerned.

4.The learned counsel for the petitioners reiterated that in these cases, the assessment years are falling prior to the amendment on 29.01.2016 and therefore, the pre-amended provision under Section 19 for input tax credit is to be considered for the purpose of passing an assessment order. Pre-amendment provision under Section 19 enumerates that "there shall be input tax credit of the amount of tax paid or payable under the TNVAT Act, by the registered dealer to the seller on his purchases of taxable goods specified in the First Schedule". The proviso states that "the registered dealer, who claims input tax credit, shall establish that the tax due on such purchases has been paid by him in the manner prescribed". Sub-section (2) states that "input tax credit shall be allowed for the purchase of goods made within the State from a registered dealer and which are for the purpose of" stated in the said provision. However, the first respondent has erroneously implemented the amended Section 19 with reference to the assessment years falling prior to the amendment. Thus, the orders of assessment were passed without any application of mind and thus, there is a jurisdictional error in application.

5.It is contended on behalf of the petitioners that when the impugned orders are passed with jurisdictional error and

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based on erroneous application of law, then a writ petition is to be entertained without exhausting the statutory appellate remedy provided under the Act itself. It is not in dispute that there is an appeal remedy made available in the statute. However, it is contended that exhaustion of an alternate remedy is not mandatory in the present case, as the Assessing Officer has not applied his mind and there is lack of jurisdiction. In view of the fact that the impugned orders are passed without any application of mind, the petitioners have chosen to file these writ petitions without exhausting the appellate remedy and therefore, the appellate remedy is to be dispensed with and the matter is to be decided on merits.

6.The learned counsel for the petitioners relied on certain judgments in support of their contentions regarding the appellate remedy by stating that High Courts and the Supreme Court have dispensed with the appellate remedy in many cases and therefore, the benefits of the judgments are to be extended in favour of the writ petitioners in the present writ petitions.

7.This Court is of the considered opinion that Section 51 of the TNVAT Act provides appeal to the Appellate Deputy Commissioner. The appeal provision contemplates procedures also. Sub-section (2) to Section 51 stipulates that the appeal shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by such fee not exceeding one hundred rupees as may be prescribed. Sub-section (3) to Section 51 denotes that in disposing of an appal, 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 assessing authority 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. Proviso to Section 51(3) provides that at the hearing of any appeal, the appropriate authority shall have the right to be heard either in person or by a representative.

8.Section 58 of the Act provides an appeal to the Appellate Tribunal. Sub-Section (1) of Section 58 enumerates that any officer prescribed by the Government or any person objecting to an order passed by the Appellate Deputy Commissioner under sub-Section (3) of Section 51, or by the Appellate Joint Commissioner under sub-Section (3) of Section 52, or by the Joint Commissioner under sub-Section (1) of Section 53, may, (a) within a period of one hundred and twenty days, in the case of an officer so prescribed by the Government; (b) within a period

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of sixty days, in the case of any other person, from the date on which the order was served, appeal against such order to the Appellate Tribunal. Procedures are also contemplated.

9.Section 59 provides appeal to High Court. Section 60 contemplates revision by High Court. These all are the framework of the statutes in order to facilitate the aggrieved persons to redress their grievances and therefore, the importance of appellate remedy cannot be dealt with in a casual manner.

10.Exhausting the appeal remedy is the rule. Dispensing with the appellate remedy is an exception. Power of discretion is to be exercised discretely only if there is an imminent urgency or damage, if any, caused or there is any threat, which cannot be compensated then alone, the extraordinary power may be invoked for the purpose of granting relief by dispensing with the appellate remedy. However, the transactions in account books and the nature of trade, business etc., and the manner in which such transactions are carried on by the assessees, its intricacies and other practical aspects are to be considered by the competent appellate authorities with reference to the original records. The appellate authority is the final fact finding authority. Thus, the findings of the appellate authority as well as the original authority are of paramount importance for the purpose of dealing with the issues by the High Court for exercising the power of judicial review under Article 226 of the Constitution of India. In other words, findings of the original authority as well as the appellate authority would be of greater assistance to the High Court for effective disposal of the writ petitions and for providing complete justice to the parties. In the event of dispensing with the appeal on frivolous grounds, the aggrieved persons are also deprived of their opportunity to adjudicate issues before the appellate authorities. Thus, it is not preferable to encourage by dispensing with the appellate remedy, which all are provided under the statute.

11.Power of judicial review of the High Court under Article 226 of the Constitution of India is to scrutinise the processes and the procedures adopted by the competent authorities for arriving a particular decision in accordance with law, but not the decision itself. Thus, the High Court cannot entertain an adjudicative process regarding the mixed question of fact and law with reference to the documents and evidences in original. High Court cannot resolve the disputed issues between the parties only based on the affidavits filed in the writ petitions. There is a possibility of omissions and commissions. Thus, adjudication before the appellate authority with reference

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to such disputed findings of the original authority would be of greater importance.

12.The learned counsel for the petitioners raised a point that the impugned assessment orders are passed by the original authority by applying the post-amended provision of the TNVAT Act, which is total non application of mind. Thus, a writ proceedings is entertainable. Even in such case of erroneous application of the provisions of the TNVAT Act, the appellate authority is empowered to correct the same and they are empowered to consider all the legal grounds raised by the parties by affording opportunity. The appeal provision itself contemplates the powers of the appellate authority and they possess enough powers to deal with all issues including the jurisdictional issues and other legal grounds raised by the respective parties.

13.This Court elaborately discussed the importance of exhausting the appellate remedy in the case of M/s.Hyundai Motor India Limited v. The Deputy Commissioner of Income Tax, Chennai and another [W.P.No.22508 of 2017 dated 16.07.2018], from which, the following paragraphs are extracted :

> "19.Unnecessary or routine invasion into the statutory powers of the competent authorities under a statute should be restrained by the Constitutional Courts. Frequent or unnecessary invasions in the executive power will defeat the constitutional perspectives enshrined under the Constitution of India. Undoubtedly, the separation of powers under the Indian Constitution has been narrated and settled in umpteen number of judgments. Separation of powers demarcated in the Constitution of India is also to be considered, while exercising the powers of judicial review in the matter of dispensing with the appeal remedy provided for an aggrieved person under a statute. If the High Courts started interfering with such Appellate powers without any valid and substantiated reasons, then the very purpose and object of the statute and provision of appeal under the statute became an empty formality and the High Courts also should see that the provisions of appeal contemplated under the statutes are implemented in its real spirit and in accordance with the procedures contemplated under the rules constituted thereon. While entertaining a writ petition as narrated by the Apex Court, the provision of efficacious alternative remedy under the statute also to be considered. If the writ petitions are entertained in a routine manner, by not allowing the competent Appellate authority to exercise their powers under the provisions of the

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statute, then this Court is of an opinion that the power of judicial review has not exercised in a proper manner. Thus, it is necessary for this Court to elaborate the legal principle settled in respect of the separation of powers under the Constitution of India.

1. Madras Bar Association vs. Union of India (UOI) (25.09.2014 - SC) : MANU/SC/0875/2014

If the historical background, the preamble, the entire scheme of the Constitution, relevant provisions thereof including Article 368 are kept in mind there can be no difficulty in discerning that the following can be regarded as the basic elements of the constitutional structure. (These cannot be catalogued but can only be illustrated):

(1) The supremacy of the Constitution.

(2) Republican and Democratic form of government and sovereignty of the country.

(3) Secular and federal character of the Constitution.

(4) Demarcation of power between the Legislature, the executive and the judiciary.

(5) The dignity of the individual secured by the various freedoms and basic rights in Part III and the mandate to build a welfare State contained in Part IV.

(6) The unity and the integrity of the Nation.

2. Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and Anr. [MANU/SC/0445/1973: (1973) 4 SCC 225].

That separation of powers between the legislature, the executive and the judiciary is the basic structure of the Constitution is expressly stated by Sikri, C.J.

3. P. Kannadasan and Ors. v. State of T.N. and Ors. [MANU/SC/0650/1996 : (1996) 5 SCC 670] the Supreme Court noted that the Constitution of India recognised the doctrine of separation of powers between the three organs of the State, namely, the legislature, the executive and the judiciary. The Court said:

It must be remembered that our Constitution recognises and incorporates the doctrine of separation of powers between the three organs of the State, viz., the Legislature, the Executive and the Judiciary. Even though the Constitution has adopted the parliamentary form of government where the dividing line between the legislature and the executive becomes thin, the theory of separation of powers is still valid.

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4. State of Tamil Nadu and Ors. vs. State of Kerala and Ors. (07.05.2014 - SC) : MANU/SC/0425/2014

121. On deep reflection of the above discussion, in our opinion, the constitutional principles in the context of Indian Constitution relating to separation of powers between legislature, executive and judiciary may, in brief, be summarized thus:

(i) Even without express provision of the separation of powers,the doctrine of separation of powers is an entrenched principle in the Constitution of India.

The doctrine of separation of powers informs the Indian constitutional structure and it is an essential constituent of rule of law.

In other words, the doctrine of separation of power though not expressly engrafted in the Constitution, its sweep, operation and visibility are apparent from the scheme of Indian Constitution. Constitution has made demarcation, without drawing formal lines between the three organs- legislature, executive and judiciary. In that sense, even in the absence of express provision for separation of power, the separation of power between legislature, executive and judiciary is not different from the constitutions of the countries which contain express provision for separation of powers.

(ii) Independence of courts from the executive and legislature is fundamental to the rule of law and one of the basic tenets of Indian Constitution.

Separation of judicial power is a significant constitutional principle under the Constitution of India.

(iii) Separation of powers between three organs--legislature, executive and judiciary--is also nothing but a consequence of principles of equality enshrined in Article 14 of the Constitution of India. Accordingly, breach of separation of judicial power may amount to negation of equality Under Article 14. Stated thus, a legislation can be invalidated on the basis of breach of the separation of powers since such breach is negation of equality Under Article 14 of the Constitution.

(iv) The superior judiciary (High Courts and Supreme Court) is empowered by the Constitution to declare a law made by the legislature (Parliament and State legislatures) void if it is found to have transgressed

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the constitutional limitations or if it infringed the rights enshrined in Part III of the Constitution.

(v) The doctrine of separation of powers applies to the final judgments of the courts. Legislature cannot declare any decision of a court of law to be void or of no effect. It can, however, pass an amending Act to remedy the defects pointed out by a court of law or on coming to know of it aligned.

In other words, a court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances.

(vi) If the legislature has the power over the subject-matter and competence to make a validating law, it can at any time make such a validating law and make it retrospective. The validity of a validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject-matter and whether in making the validation law it removes the defect which the courts had found in the existing law."

20.This Court is of a strong opinion that institutional respects are to be maintained by the constitutional Courts. Whenever there is a provision for an appeal under the statute, without exhausting the remedies available under the statute, no writ petition can be entertained in a routine manner. Only on exceptional circumstances, the remedy of appeal can be waived, if there is a gross injustice or if there is a violation of fundamental rights ensured under the Constitution of India. Otherwise, all the aggrieved persons from and out of the order passed by the original authority is bound to approach the Appellate Authority. The Constitutional Courts cannot make an appeal provision as an empty formality. Every Appellate Authority created under the statute to be trusted in normal circumstances unless there is a specific allegation, which is substantiated in a writ proceedings. Thus, the institutional functions and exhausting the appeal remedies by the aggrieved persons, are to be enforced in all circumstances and writ proceedings can be entertained only on exceptional circumstances. Rule is to prefer an appeal and entertaining a writ is only an exception. This being the legal principles to be followed, this Court cannot entertain the writ petitions in a routine manner by waiving the remedy of appeal provided under

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the statute.

21.Now, let us look into the legal principles settled by the Apex Court for exhausting the efficacious alternative remedy provided under the statute.

22.When an effective alternative remedy is available, a writ petition cannot be maintained

1. In City and Industrial Development Corporation v. DosuAardeshirBhiwandiwala and Ors. MANU/SC/8250/2008 : (2009) 1 SCC 168, this Court had observed that:

The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the Petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.

2. KanaiyalalLalchand Sachdev and Ors. vs. State of Maharashtra and Ors. (07.02.2011 - SC) : MANU/SC/0103/2011

It is well settled that ordinarily relief Under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See Sadhana Lodh v. National Insurance Co. Ltd.; Surya Dev Rai v. Ram Chander Rai and SBI v. Allied Chemical Laboratories.)

3. Commissioner of Income Tax and Ors. v. ChhabilDass Agarwal, MANU/SC/0802/2013 : 2014 (1) SCC 603, as follows:

Para 15. while it can be said that this Court has recognised some exceptions to the Rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition

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laid down in ThansinghNathmal case, Titaghur Paper Mills case and other similar judgments that the High Court will not entertain a petition Under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

4. Authorized Officer, State Bank of Travancore and Ors. vs. Mathew K.C. (30.01.2018 - SC) : MANU/SC/0054/2018

The petitioner argued that the SARFAESI Act is a complete code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions, the remedy of appeal by the aggrieved under Section 17 before the Debt Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section 18. The High Court ought not to have entertained the writ petition in view of the adequate alternate statutory remedies available to the Respondent. The interim order was passed on the very first date, without an opportunity to the Appellant to file a reply. Reliance was placed on United Bank of India vs. Satyawati Tandon and others, 2010 (8) SCC 110, and General Manager, Sri Siddeshwara Cooperative Bank Limited and another vs. Ikbal and others, 2013 (10) SCC 83. The writ petition ought to have been dismissed at the threshold on the ground of maintainability. The Division Bench erred in declining to interfere with the same. The Supreme Court agreed to the arguments and held the same also noted that the writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the Appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum.

5. State of Himachal Pradesh v. Gujarat Ambuja Cement Ltd. reported at AIR 2005 SC 3856, the Supreme Court explained the rule of 'alternate remedy' in the following terms

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Considering the plea regarding alternative remedy as raised by the appellant-State. Except for a period when Article 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction.

6. K.S. Rashid and Sons v. Income Tax Investigation Commission and Ors., AIR (1954) SC 207; Sangram Singh v. Election Tribunal, Kotah and Ors., AIR (1955) SC 425; Union of India v. T.R. Varma, AIR (1957) SC 882; State of U.P. and Ors. v. Mohammad Nooh, AIR (1958) SC 86 and M/s K.S. Venkataraman and Co. (P) Ltd. v. State of Madras, AIR (1966) SC 1089,

Constitution Benches of the Supreme Court held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

7. First Income-Tax Officer, Salem v. M/s. Short Brothers (P) Ltd., [1966] 3 SCR 84 and State of U.P. and Ors. v. M/s. Indian Hume Pipe Co. Ltd., [1977] 2 SCC 724.

There are two well recognized exceptions to the doctrine of exhaustion of statutory remedies. First is

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when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition."

14.As far as the judgment of the Hon'ble Supreme Court of India in the case of M/s.Canon India Private Limited v. Commissioner of Customs [Civil Appeal No.1827 of 2018, dated 09.03.2021] is concerned, as rightly pointed out by the learned Government Advocate appearing on behalf of the respondents, the matter went to the Hon'ble Apex Court by way of regular appeal and the Hon'ble Supreme Court of India, while adjudicating the final orders passed by the Appellate Tribunal, formed an opinion that the issuance of show cause notice itself was by an improper authority. Thus, by citing the said finding, the appellate remedy otherwise provided under the Statute cannot be dispensed with, and in the event of accepting the said contention, in all such cases, every litigant will approach the High Court by way of writ petition bypassing the appellate remedy, which is not desirable and cannot be accepted. As observed earlier, Institutional respect is of paramount importance. Even the point of jurisdiction, limitation, error apparent on the face of the record, are on merits and all are to be adjudicated before the appellate authority and the appellate authority, more specifically, the Appellate Tribunal or the Commissioner (Appeals), as the case may be, is empowered to adjudicate all such legal grounds raised by the respective parties and make a finding on merits. Thus, usurping the powers of the appellate authorities by the High Court by invoking its powers under Article 226 of the Constitution of India is certainly unwarranted. The parties must be provided an opportunity to approach the appropriate authorities for redressal of their grievances in the manner known to law. In the event of entertaining all such writ petitions, the High Court will not only be over-burdened, but usurping the powers of the appellate authority, which is certainly not desirable.

15.Jurisdictional error should not result in exoneration of liability. Jurisdictional error, if any committed, is technical, and thus, rectifiable. In such circumstances, the Courts are expected to quash the order passed by an incompetent authority and remand the matter back for fresh adjudication. Contrarily,

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if an assessee is exonerated from liability, undoubtedly, the purpose and object of the Act is defeated.

16.The growing practice in the High Court is to file writ petitions under Article 226 of the Constitution of India without exhausting the statutory remedies provided under the Act. The points raised in this regard are statutory violations. However, even such statutory violations can be dealt with by the Appellate authorities or the Appellate Tribunals. This apart, in a writ petition, if such orders are passed with jurisdictional errors and quashed without any remand, then an injustice would be caused to the very spirit of the statute enacted for the benefit of the public at large. Thus, Courts are expected to be cautious, while granting exoneration of liability merely on the ground of jurisdictional errors, if any committed by the authorities competent. On some occasions, jurisdictional errors are committed wantonly or in collusion with the assessees, knowingly that there is a possibility of escaping from the clutches of law. Thus, the higher authorities of the Department are expected to be watchful and review the orders passed by the subordinate authorities and in the event of any negligence, dereliction of duty, collusion or corrupt activities, then such officials are liable to be prosecuted apart from initiation of departmental disciplinary proceedings. The procedures to be followed in the department for assessment are well settled. Thus, the authorities competent are not expected to commit such jurisdictional errors in a routine manner. In these circumstances, review of such orders by the higher authorities are imminent to form an opinion that there is willful or intentional act for commission of such jurisdictional errors, enabling the assesses to get exonerated from the liability. Liability and jurisdictional errors are distinct factors, and therefore, Courts are expected to provide an opportunity to the Department to decide the liability on merits and in accordance with law with reference to the provisions of the Act and Rules and guidelines issued by the Department.

17.Large number of writ petitions are filed without exhausting the statutory appeal remedies and High Court is also entertaining such writ petitions in a routine manner. Keeping such writ petitions pending for long time would cause prejudice to the interest of the assessee also. Thus, such statutory provisions regarding the appeal are to be decided at the first instance, enabling the litigants to avail the remedy by following the procedures as contemplated under law. Such writ petitions are filed may be on the ground of jurisdiction or otherwise. However, the Courts are expected to ensure that all such legal grounds available to the parties are adjudicated before the proper forum and only after exhausting the statutory remedies, writ petitions are to be entertained. In the absence

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of exhausting such remedies, High Court is losing the benefit of deciding the matter on merits, as the High Court cannot conduct a trial or examine the original records in the writ proceedings under Article 226 of the Constitution of India. Thus, the Courts shall not provide unnecessary opportunities to the assessee to escape from the liability merely on the ground of jurisdictional error, which is rectifiable.

18.These being the principles to be followed, this Court has no hesitation in arriving a conclusion that the petitioners are bound to exhaust the statutory appellate remedy as contemplated under the provisions of the TNVAT Act. Thus, the petitioners are at liberty to approach the appellate authority by filing appeal/revision and by following the procedures contemplated. The delay, if any occurred, for filing the appeal, shall be condoned by the appellate authority and the appeal shall be taken on file to be adjudicated on merits and in accordance with law and by affording opportunity to all the parties concerned.

19.With the above observations and directions, these writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

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Sub Assistant Registrar

abr

To

1. The Commercial Tax Officer (Main),
   Tindivanam.

2. The Commercial Tax Officer-IAC,
   3rd Floor,
   100 Feet Road,
   Ellapillaichavady,
   Pondicherry-605 505.

3. The Commercial Tax Officer,
   Tambaram Circle,
   Tambaram.

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Copy to:

The Section Officer,
E.R.Section,
High Court, Madras-104

(To return the Original
impugned Order)

+12ccs to Mr.N.V.Balaji , Advocate, S.R.No.28267 to 28278

+1cc to the Special Government Pleader(Taxes),
S.R.No.28071,28072,28074

W.P.Nos.23200 to 23203, 23766 to 23769
& 30826 to 30829 of 2016

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SU(05/08/2021)

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