IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2021

CORAM:

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

W.P.NO.4994 OF 2013
AND
M.P.NO.1 OF 2013

M/s.Sri Karpagavinayagar Vilas,
Rep. By its Proprietor,
No.99/100, Thiru.Vi.Ka Road,
Villupuram – 605 602. ... Petitioner

.Vs.

The Commercial Tax Officer,
Villupuram – 1 Asst. Circle,
Villupuram. ... 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 impugned proceedings of the respondent in TIN No.33904680962/2010-2011 and quash the order dated 4.6.2012 as passed contrary to Section 3(1)(b) of the TNVAT Act.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.V.Veluchamy
Government Advocate

O R D E R

The order dated 04.06.2012 passed by the respondent is under challenge in the present writ petition.

2. The petitioner is a dealer in brass vessels and a registered dealer on the files of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006.

3. The learned counsel for the petitioner made a submission that an assessment order was passed on 25.04.2012 and the input tax paid was Rs.75,664/- and in the assessment order all the

details regarding the input (value) and output (value) were considered by the assessing authority and an order was passed. Immediately, after one day, the respondent issued a notice on 26.04.2012 stating that a further verification of the assessment filed was done and the said verification revealed that the petitioner had claimed the input tax credit to an amount of Rs.75,664/- in Form I, return for the year 2010-11. The petitioner has effected purchase and sales within the State only and their total sales turn over is Rs.6,69,459/-, which is below the limit of Rupees Ten Lakhs. As such the petitioner is not eligible to claim the input tax credit and respondent has proposed to disallow the claim of input tax credit of Rs.75,664/-. Pursuant to the impugned notice, the order impugned dated 04.06.2012 was issued. The impugned order reveals that the petitioner/dealer had not responded to the notice and no objections were filed. Thus, the respondent passed the final orders in proceedings dated 04.06.2012.

4. Though the petitioner has raised certain grounds in respect of the order impugned passed by the respondent, admittedly, the petitioner has not exhausted the appellate remedy as contemplated under the provisions of the Act. The petitioner has not even responded by filing their objections to the notice issued by the respondent on 26.04.2012. Under these circumstances, the petitioner is bound to exhaust the appellate remedy in the manner prescribed.

5. 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.

6. 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.

7. 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.

8. 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.

9. In view of the facts and circumstances, the petitioner is at liberty to prefer an appeal, before the competent authority, within a period of four weeks from the date of receipt of a copy of this order, in the prescribed form complying with the provisions. The appellate authority in the event of receiving any appeal from the petitioner, shall entertain the same, condone the delay if any, adjudicate the appeal on merits and in accordance with law and pass final orders, by affording opportunity to the writ petitioner, as expeditiously as possible.

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

11. Registry is directed to return the original impugned order to the learned counsel on record, who filed the writ petition.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer,
Villupuram - 1 Asst. Circle,
Villupuram.

Copy To:

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

+1cc to Mr.P.Rajkumar, Advocate, S.R.No.40960
+1cc to the Government Pleader, S.R.No.41446

W.P.NO.4994 OF 2013

NMI(CO)
PBS/06/09/2021