



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.7029 to 7033 of 2013
and
M.P.No.1 of 2013 (In each W.P.)

M/s.Nithya Sizing and Weaving Mills,
3/267, Nithya Garden, Annur Road,
Karumathampati Via Kittampalayam,
Tiruppur District.

...Petitioner in
all W.Ps.

-vs-

- 1.The Assistant Commissioner (CT) (FAC),
Tiruppur Central II Circle,
Tiruppur.
- 2.The Joint Commissioner (Enf) (CT),
Coimbatore-641 018.
- 3.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

...Respondents in
all W.Ps.

Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the proceedings of the respondent in TIN: 33212461836/2007-08, 33212461836/2008-09, 33212461836/2009-10, 33212461836/2010-11 and 33212461836/2011-12 dated 31.01.2013 and quash the same.

For Petitioner : Mr.M.Hariharan
(In all W.Ps.)

For Respondent : Mr.V.Veluchamy,
(In all W.Ps.) Government Advocate

COMMON ORDER

These writ petitions are filed challenging the revised assessment orders dated 31.01.2013, passed under Section 25 of



the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "the TNVAT Act") for the assessment years 2007-08 to 2011-12.

2.The learned counsel for the petitioner mainly contended that the Assessing Officer has failed to consider the circular issued by the Government granting exemption and further, no opportunity of personal hearing was provided. Thus, the petitioner could not able to defend his case properly by producing the circular and judgments in this regard.

3.This Court is of the considered opinion that certain disputed facts, application of Government Orders and grant of exemptions are to be considered with reference to the provisions of the TNVAT Act as well as the Government Orders in force. It requires an adjudication based on the documents and evidences to be produced by the respective parties. The decisions regarding grant of tax exemption and application of certain provisions with reference to the facts cannot be considered in a writ proceedings under Article 226 of the Constitution of India. A deliberation is required and the power of judicial review under Article 226 is to scrutinize the processes through which a decision is taken by the competent authority to arrive a decision, but not the decision itself. Thus, an adjudication is required based on the mere affidavit and counter affidavit filed by the parties. Such an adjudication cannot be done in a writ proceedings. This apart, appeal provisions are contemplated under the statute in order to redress the grievances of the assesseees. The powers of the appellate authority, at no circumstances, be undermined and the assesseees are also entitled to avail the benefit of appeal for complete adjudication of facts, as the appellate authority is the final fact finding authority. Thus, they are empowered to correct the factual mistakes, if any, committed by the original authority or application of legal provisions as well as the Government Orders in force. Therefore, appellate remedy to be exhausted cannot be waived in a routine manner. The findings made by the original authority as well as the appellate authority would be of greater assistance to the High Court for the purpose of exercise of powers of judicial review under Article 226 in an effective manner. Appellate provisions are enacted with an intention to resolve the factual disputes in its entirety with reference to the records. This being the legislative intention, preferring an appeal is the rule and entertaining a writ is an exemption. A writ may be entertained, if any damage is caused to a litigant, which cannot be compensated or there is an urgency for grant of any such relief and not otherwise. The litigants are advised to raise the principles of natural justice in many cases only for the purpose of maintaining a writ petition. However,



the Courts are bound to look into the nature of the violations for the purpose of exhausting the appellate remedy contemplated.

4.The learned counsel for the petitioner relied on the orders passed by this Court on 03.03.2021 in W.P.Nos.30225 to 30231 of 2015 wherein, this Court remanded the matter back to the original authority.

5.The learned Government Advocate for the respondents disputed the grounds raised by the petitioner by stating that the facts in the said case are different and therefore, remand need not be granted.

6.These writ petitions are filed in the year 2013 and are pending for the past seven years. Under these circumstances, this Court is of an opinion that for the purpose of personal hearing, the matter need not be remanded back.

7.Accordingly, the petitioner is at liberty to prefer an appeal to the appellate authority under the provisions of the TNVAT Act in the prescribed format within a period of four weeks from the date of receipt of a copy of this order and on receipt of any such appeal from the petitioner, the appellate authority shall dispose of the same as expeditiously as possible on merits and in accordance with law and by affording opportunity to the petitioner.

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

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Assistant Commissioner (CT) (FAC),
Tiruppur Central II Circle,
Tiruppur.

2.The Joint Commissioner (Enf) (CT),
Coimbatore-641 018.



3.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

+5cc to Mr.Ravee Kumar, Advocate,Sr.31502
+1cc to the Government Pleader,Sr.31439

W.P.Nos.7029 to 7033 of 2013

PCH[co]
NSK 06/08/2021