IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.08.2021

CORAM:

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

WP No.24244 of 2016
and
WMP No.20711 of 2016

Marvel Machines Private Limited,
Rep. By its General Manager,
140, Anna Salai,
Saidapet, Chennai - 600 015. ...Petitioner

Vs

Assistant Commissioner (CT),
Alandur Assessment Circle,
No.12, Near Alandur Bazar,
Vedagiri Street, Alandur,
Chennai - 600 016. ...Respondent

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for records on files of the respondent in its proceeding in TIN 33960981543/2014-15 dated 22.06.2016.

For Petitioner : Mr.T.V.Lakshmanan

For Respondent : Mr.V.Nanmaran
Government Advocate.

O R D E R

The order-in-original passed by the 2nd respondent regarding ITC reversal under Section 19(2) (5) of the Tamil Nadu Value Added Tax Act, 2006, is under challenge in the present writ petition.

2. The petitioner purchases raw materials, which steels of various shapes, size and composition, within the State to manufacture machinery, machinery parts and fabrication. Such machinery products are sold both locally and inter-State. The tax paid on such purchases is taken credit for payment of tax payable by the petitioner on its sales, both locally and inter-state. The petitioner was assessed for the year 2014-15 under the Central Sales Tax Act. During the course of the year, the

petitioner has taken input tax credit on the purchase and used the same for the payment of local and inter-State sales. However, the respondent by notice in TIN 33960981543/2014-15 dated 1.9.2015 proposed to reverse the credit on the inter-State sales effected. The petitioner filed objection dated 10.09.2015. Thereafter, the respondent passed impugned order in proceedings dated 22.06.2016, overruling the petitioner's objection and confirming the proposals.

3. The learned counsel appearing on behalf of the writ petitioner mainly contended that the issues raised in the writ petition has already been considered by this Court and order is passed in W.P.No.7969 of 2014 etc. batch dated 06.02.2017 [Everest Industries Limited Vs. The State of Tamil Nadu and Ors.] and the said judgement was followed in another case viz., Universal Engineering Works Vs. The Assistant Commissioner (CT), Chepakkam Assessment Circle, in WP No.25820 of 2015 dated 23.01.2020.

4. Relying on the said judgments, the learned counsel for the petitioner reiterated that the petitioner is also entitled for the benefits granted by this Court in the above orders and the same is to be extended to the petitioner also and accordingly, writ petition has to be allowed.

5. It is not in dispute that an appellate remedy is available under the provisions of the Act and the petitioner has not exhausted the appellate remedy contemplated under the statute. Under these circumstances, this Court is of the considered opinion that the principles decided by the Courts are one aspect of the matter and the factual adjudication of disputes or issues by a competent authority as well as the appellate authority are of paramount importance for the purpose of application of the principles. It is not as if the High Court may pass an order merely on the principle and in such circumstances, there is a possibility of error, omission or commission, as the facts may differ from case to case and the disputes may be distinct and different.

6. Even in cases where the issue is one and the same, application of law with reference to the business transactions on trading techniques may differ and all these aspects have to be taken into consideration for the purpose of extending certain benefits either under the statute or from the judgments delivered by the Courts. In either of the case, factual adjudication is of paramount importance and such elaborate adjudication cannot be done by the High Court in a writ petition under Article 226 of the Constitution of India. The trading techniques, accounting intricacies and other details are to be scrutinised by the experts in the filed. The High Court cannot

be considered as an expert in the field of accountancy.Thus, such an adjudication with reference to the disputed facts deserves complete adjudication for the purpose of extending certain benefits under the tax. In the event of passing the order in a routine manner, undoubtedly, there is a possibility of huge loss to the revenue and therefore, the High Courts are expected to be cautious of similar judgments that are produced before the Court for consideration.

7. Contrarily, if the petitioner/assessee prefers an appeal before the competent appellate authority, which is a quasi judicial authority, he is certainly empowered to adjudicate both the factual grounds as well as the legal grounds and also the judgments delivered by the High Courts and the Supreme Court.

8. Therefore, the importance of an appellate remedy at no circumstances be undermined and in all circumstances, the fact finding must be concluded at the hands of the appellate authority.

9. The appellate authority is the fact finding authority. It provides a valuable right to the assessee also. Whatever omission or commission is done by the original authority may be rectified by the appellate authority on scrutinising of original files and documents made available before such authority. Therefore, if the writ proceedings are entertained and ordered merely based on a judgment in the absence of complete adjudication of disputed facts, this Court is of the opinion that such course may result in commission of error or cause unjust loss to the revenue.

10. Thus, in all circumstances, parties must be allowed to exhaust the statutory remedy and in one way it is beneficial to the aggrieved person also. The aggrieved person are losing a valuable opportunity of redressing their grievances which is otherwise legislatively intended under the statute. Thus, the High Court cannot adjudicate the factual disputes or directly apply certain principles in the absence of complete adjudication of factual disputes by the competent authority as well as the appellate authority.

11. The practice of filing writ petition without exhausting the appellate remedy is in an ascending node in the High Court. Entertaining such writ petitions and keeping the same for years together, undoubtedly would cause hardship to the litigants. They are unable to ascertain their position and finally after a lapse of many years, if their claims are rejected, then also they suffer as they are bound to pay the tax which are due long back. All these aspects are to be borne in mind at the time of entertaining the writ petitions filed without exhausting the

statutory remedy contemplated under the provisions of the statute.

12. Such writ petitions are frequently filed either to avoid payment of pre-deposit or by stating that they may not get speedy remedy. Both the grounds are untenable, in view of the fact that even in cases of pre-deposit made, on disposal of the matter, either the pre-deposit will be adjusted to the tax or it will be refunded to the assessee, as the case may be.

13. Further, if the litigant states that he may not get speedy remedy that also deserves no consideration in view of the fact that the writ petitions are filed and kept pending for more than a decade. In view of the fact that such writ petitions are entertained in a routine manner and kept pending for long years, it causes great prejudice to the assessee as well as to the revenue. Thus, the Courts even at the stage of admission is bound to ensure whether the appellate remedy contemplated under the statue is exhausted or not and only in exceptional circumstances where incompetent authority issued an order hitting directly the provisions of the statute or an allegation of mala fide grounds are raised, then alone the writ petition needs to be entertained and not otherwise. Even in case of raising an allegation of mala fide the authority against whom such allegation is raised must be impleaded as a party in his personal capacity.

14. Even in case incompetency is raised with reference to the provisions of the Act in a direct manner, such orders passed by incompetent authority has to be set aside and the matter has to be remanded back for fresh consideration by the competent authority.

15. This being the course to be followed, this Court is of the opinion that the petitioner in this case is bound to file an appeal by raising all the grounds both factual and legal as well as place the judgments relied on by them, for the purpose of complete adjudication of issues, in the manner known to law.

16. Accordingly, the petitioner is at liberty to prefer an appeal, in the prescribed form and by complying with the provisions of the Act, before the competent authority within a period of four weeks from the date of receipt of a copy of this order. If any such appeal is received by the competent appellate authority, such authority shall condone the delay, if any and entertain the appeal and dispose of the same on merits and in accordance with law, by affording an opportunity to the writ petitioner, as expeditiously as possible.

17. With these observations, the writ petition is disposed of. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

Assistant Commissioner (CT),
Alandur Assessment Circle,
No.12, Near Alandur Bazar,
Vedagiri Street, Alandur,
Chennai - 600 016.

+1 cc to the Special Government Pleader, Sr.No.40537

WP No.24244 of 2016

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