IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2021

CORAM:

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

W.P.NOS.30665, 30666 AND 30785 OF 2016
AND
M.P.NOS.26572, 26571 AND 26681 OF 2016

Tvl.Chittibabu Agencies,
Rep. By its Proprietor. ... Petitioner in W.P.Nos.30665 & 30666 of 2016

Tvl.Suseela Machinery Electricals
Rep. By its Proprietor. ... Petitioner in W.P.No.30785 of 2016

.Vs.

The Commercial Tax Officer,
Cuddalore - Town ... Respondent in all WP's.

Prayer in W.P.No.30665 of 2016:-

This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records of the respondent in order dated 30.06.2016 in TIN No.33184380755/2010-2011 and quash the same.

Prayer in W.P.No.30666 of 2016:-

This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records of the respondent in order dated 30.06.2016 in TIN No.33184380755/2011-2012 and quash the same.

Prayer in W.P.No.30785 of 2016:-

This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records of the respondent in order dated 30.06.2016 in TIN No.33524380568/2010-2011 and quash the same.

For Petitioner in all W.Ps : Mr.Adithya Reddy

For Respondent in all W.Ps : Mr.V.Veluchamy Government Advocate

COMMON ORDER

These writ petitions are filed challenging the original assessment order passed by the Commercial Tax Officer.

2. The learned counsel for the petitioners states that the writ petitions are filed both on facts as well as on certain legal grounds and thus, the same has to be entertained.

3. Perusal of the grounds would reveal that mixed question of law and facts are raised and the appellate authority is competent to adjudicate both the question of law as well as facts for the purpose of redressal of the grievances of the writ petitioner.

4. 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.

5. 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.

6. 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.

7. All the writ petitions are filed challenging the original assessment orders. Thus, the petitioners are at liberty to prefer an appeal contemplated under the statute for redressal of their grievances by following the procedures. The petitioners are at liberty to prefer such appeals within a period of four weeks from the date of receipt of a copy of this order. The appellate authority in the event of receiving any appeal from the petitioners, shall entertain the same, condone the delay if any, and adjudicate the appeals on merits, in accordance with law and by affording opportunity to the parties concerned as expeditiously as possible.

8. With these directions, all the three Writ Petitions stand disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer,
Cuddalore - Town.

+1cc to Mr.Adithya Reddy, Advocate, S.R.No.38755
+2ccs to the Special Government Pleader (Taxes), S.R.No.38993 & 38994

W.P.NOS.30665, 30666 AND
30785 OF 2016

AD(CO)
PBS/31/08/2021