

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. No. 5977 of 2015

and

M.P. No. 1 of 2015

M/s.Consolidated Construction Consortium Ltd.,
Represented by V.Meenakshi Sundaram,
Manager (Accounts) and the authorised signatory,
No.5, 2nd Link Street,
CIT Colony,
Mylapore, Chennai - 600 004.

...Petitioner

-vs-

The Commercial Tax Officer,
Mylapore Assessment Circle,
Chennai.

...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari calling for the records of the impugned revised order of assessment in TIN No.33190701326/2013-14 dated 11.02.2015 on the file of the respondent herein and quash the same.

For Petitioner : Ms.Aparna Nandakumar
For Respondent : Mr.V.Veluchamy
Government Advocate

O R D E R

The writ on hand is filed questioning the validity of the order dated 11.02.2015 issued by the respondent.

2. The petitioner is engaged in execution of works contract and executed work for the Airports Authorities of India, Adyar Cancer Institute and various SEZ developers and Co-developers such as Nokia, Cheyyar etc. The petitioner is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the petitioner claimed Input Tax Credit under Section 5(2) r/w Section 19(1) proviso of the Tamil Nadu Value Added Tax Act against their output tax liability. Most specifically for the assessment year 2013-14, an adjudication was made and the authority passed the order rejecting the claim of the writ petitioner.

3. The learned counsel for the petitioner drawn the attention of this Court with reference to the order impugned passed by the respondent and contended that, the petitioner was not provided with an opportunity to put forth their case in entirety. It is stated in the impugned order that the petitioner has not established movement of goods and the mode of payment was also not proved. In this regard, the learned counsel for the petitioner made a submission that the petitioner was not provided with an opportunity to establish the same, if any such query if at all raised the petitioner was in a position to establish the said facts and therefore, the order was passed in violation of the principles of natural justice.

4. The issues raised on merits cannot be adjudicated by this Court in a writ proceedings. Such an adjudication of the disputed facts required scrutinization of documents and evidences in original.

5. As far as the ground raised by the petitioner is concerned, the impugned order reveals that the notice was issued to the petitioner dealer on 07.11.2014 and the dealer have filed reply in writing on 24.11.2014 and a personal hearing was provided on 11.02.2015. The petitioner dealer also replied that the registration was cancelled with retrospective date and produced the monthly returns for the month of March 14 filed by the Tvl.Ocean Impex and the dealers have produced the original invoices at the time of personal hearing. Thus, this Court is of an opinion that an opportunity was provided to the petitioner, however, the sufficiency of the opportunity is questioned, then the Petitioner would have filed an appeal and the High Court cannot venture into the adjudication of the disputed facts. It is not the case, where there is no opportunity was provided. The sufficiency of the opportunity is questioned by the petitioner. In such circumstances, the Appellate remedy would be proper and Appellate Authority is a quasi-judicial authority and therefore, empower to adjudicate both the question of facts as well as the legal grounds raised along with the Judgment relied upon.

6. The impugned order states that the petitioner has not proved the movement of goods and further not moved the mode of payment. These issues require an adjudication with reference to the documents and evidences. The Appellate Authority is the final fact finding authority and therefore competent to call for the original records and adjudicate the issues by affording an opportunity to all the parties.

7. The importance of appellate remedy at no circumstances be undermined. The valuable right of an assessee to redress his grievances in an appeal under statute need not be taken away in a routine manner. If such remedy is taken away, the aggrieved person is deprived of one opportunity of effective adjudication before the Appellate Authority with reference to the disputed facts and perusal of the original documents. Therefore, exhausting the appellate remedy in such circumstances is not only relevant, but valuable both for the assessee as well as to the Revenue.

8. Preferring an appeal is the rule. Entertaining a Writ Petition before exhausting the appellate remedy is an exception. 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.

9. 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.

10. The point of delay may be an acceptable ground for the purpose of entertaining a Writ Petition. The practise of filing the Writ Petition without exhausting the statutory remedies are in ascending mode and such Writ Petitions are filed with a view to avoid pre-deposits to be made in statutory appeals and on the ground that the appellate remedies are time consuming.

11. In view of the facts and circumstances, the petitioner is at liberty to prefer an appeal before the Competent Appellate Authority within a period of four weeks from the date of receipt of a copy of this order in a prescribed format and by applying with the provisions of statutory rules. In the event of filing of such appeal, the Competent Appellate Authority shall condone the delay if any considering the fact that the Writ Petition is pending before this Court and dispose of the appeal on merits and in accordance with law and by affording an opportunity to the writ petitioner as expeditiously as possible.

12. With these directions, the Writ Petition stands disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vji

To

The Commercial Tax Officer,
Mylapore Assessment Circle,
Chennai.

COPY TO:

The Section Officer,
ER Section, High Court,
Madras.

+1 CC to The Special Government Pleader, Sr.No. 40534.
+1 Cc to M/s.Aparna Nandakumar, Advocate, Sr.No. 39928.

W.P. No. 5977 of 2015
and
M.P. No. 1 of 2015

BP(CO)
LS(15/09/2021)