IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.06.2021

Coram

The Honourable Mr.Justice V.PARTHIBAN

W.P.Nos.12251, 12254 & 12255 of 2021 and

W.M.P.Nos.13028, 13029 & 13032 of 2021

Smt U.Mani ...Petitioner in all W.Ps

Versus

1.The Assistant Commissioner (ST),
Velandhipalayam Assessment Circle,
Coimbatore 641 018.

2.The Appellate Deputy Commissioner (CT),
Commercial Tax Building,
Dr.Balasundaram Road,
Coimbatore 641 018.

...Respondents in all W.Ps

Common Prayer in all W.P.s

These Writ Petitions are filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus to call for the records of the second respondent in Return Memo A.thi.mu.187/2021/A1, A.thi.mu.188/2021/A1,A.thi.mu.189/2021/A1 in TIN 33036202158/2012-13, 2013-14, 2014-15 dated 22.03.2021 and consequently, direct the second respondent to entertain the appeal without insisting for payment of pre-deposit and the certified copy of the order appealed against.

For Petitioner in all W.Ps : Mr.S.Durairaj

C O M M O N O R D E R

These writ petitions have been filed for the issuance of a writ of certiorarified mandamus to call for the records of the second respondent in Return Memo A.thi.mu.187/2021/A1, A.thi.mu.188/2021/A1, A.thi.mu.189/2021/A1 in TIN 33036202158/2012-13, 2013-14, 2014-15 dated 22.03.2021 and consequently, direct the second respondent to entertain the appeal without insisting for payment of pre-deposit and the certified copy of the order appealed against.

2. The petitioner is a registered Government Contractor with the Coimbatore City Municipal Corporation. During the assessment years 2012-13, 2013-14, 2014-15, the first respondent reopened the same and the petitioner was issued with the notice dated 04.10.2018 and a proposal was made for taxable turn over of Rs.97,40,563/- and demanded the tax under Section 5 of TNVAT Act, 2006, plus penalty. The petitioner had responded to the notice by way of reply dated 12.11.2018, enclosing the Form L return showing the actual taxable turn over. The copies of the TDS Certificate were also enclosed.

3. According to the petitioner, the petitioner had not received any further communication from the first respondent and was under the bonafide impression that the issue was closed after the reply was sent by the petitioner. However, to the surprise of the petitioner, vide bank letter dated 25.02.2021, the first respondent had attached the bank account of the petitioner for a sum of Rs.57,37,484/-. The petitioner has also enquired about the details forming the basis of the attachment order.

4. Thereafter, an appeal was preferred against the impugned action in terms of Section 51 of the TNVAT Act on 05.03.2021. However, the appeal was returned vide letter dated 09.03.2021 on the ground that the appeal was defective on the aspect of limitation and also the original order had not been enclosed. Thereafter, the return was explained and re-presented. But the appeal was once again returned on 16.03.2021, that pre-deposit had not been paid and the original order had not been enclosed. The appeal papers are once again represented on 20.03.2021 with some explanation. But the same was once again returned on 22.03.2021 with the same objections. These writ petitions are filed challenging the return of the appeal, before this Court.

5. From the above factual narrative, this Court is unable to appreciate how the present writ petitions are maintainable when particularly, the petitioner has chosen to file appeals and the appeals were returned only on the ground of non-compliance by the petitioner in not presenting the appeals properly. When a statute mandates a particular procedure to be adopted while preferring an appeal, the same has to be complied with in the manner indicated in the statutory provision and not otherwise. In any event, the petitioner cannot invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, in order to avoid pre-deposit and the writ jurisdiction cannot be certainly made available for

avoiding the statutory appeal being filed before the authority concerned. It is certainly open to the petitioner to approach the authority concerned by presenting the appeal by duly following the procedure in terms of the relevant regulation and convince the authority that the re-assessment was not supported by any materials. However, it is not open to the petitioner to rush to this Court at this stage by invoking the extraordinary remedy under Article 226 of the Constitution of India.

6. Therefore, these writ petitions are not maintainable and all the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gsk/mrr

To

1.The Assistant Commissioner (ST),
Velandhipalayam Assessment Circle,
Coimbatore 641 018.

2.The Appellate Deputy Commissioner (CT),
Commercial Tax Building,
Dr.Balasundaram Road,
Coimbatore 641 018.

+1cc to Government Pleader, Sr.27541.
+1cc to Special Government Pleader(Taxes), Sr.27559.
+3cc to M/s.S.Durairaj, Advocate,Sr.27454,27453,27455.

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NSK 22/07/2021