IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.06.2021

CORAM

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

W.P.No.2935 of 2016
and
W.M.P.No.1919 of 2016

M/s.Suriya Chemicals
represented by its Proprietor,
P.Jeevanandam,
3/7E, Mel Road,
Vanavasi,
Salem - 636 457,
Salem District. ...Petitioner

Vs

The Assistant Commissioner (CT),
Omalur Assessment Circle,
Omalur. ... Respondent

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, to call for the records on the files of the respondent in TNGST.3243574/2003-04 dated 28.08.2014 and quash the same as being contrary to the principles of natural justice and that of the principle laid down by this Hon'ble Court in the judgment reported in (2005), 142 STC 130 (T.M.Rajaganapathi Traders, Vs. Commercial Tax Officer, Salem).

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.V.Veluchamy
Government Advocate

O R D E R

The Assessment Order passed by the respondent in proceedings dated 28.08.2014 for the Assessment Year 2003 - 04 is under challenge in the present writ petition.

2. The learned counsel for the petitioner mainly contended that the writ petitioner earlier filed W.P.Nos.8035 & 8036 of 2012 and this Court passed an order dated 19.04.2012, directing the respondents to furnish all the necessary documents relied on by them to the petitioner and pass fresh Assessment Orders in accordance with law, within a period of six (6) weeks from the date of receipt of a copy of that order. The grievance of the petitioner is that the directions issued by this Court in the year 2012, has not been complied with. The necessary documents sought for by the petitioners are not furnished and, therefore, the writ petitioner is unable to defend their case effectively. Thus the impugned Assessment Order is to be set aside and the respondent is directed to furnish all necessary documents enabling the petitioner to defend his case and thereafter, pass an appropriate Order of Assessment with reference to the Assessment Year 2003 - 04.

3. The claim set out in the writ petition directing the respondents to furnish the necessary documents are undoubtedly reasonable. The assessee is entitled to defend his case with reference to the documents available and relied on by the Department for passing the Assessment Order. However, the availability of documents and the reliance placed by the Department are relevant factors to be taken note of by the Courts. It is possible that on some circumstances, certain documents may not be available for references. However, those disputed circumstances or references, if any made is to be adjudicated by the writ petitioner by filing an appeal before the Appellate Authority as admittedly the statutory appeal is provided under the Provisions of the Act.

4. By seeking certain documents, without ascertaining the availability or non-availability of such documents, an assessee cannot be permitted to prolong and protract the issues with reference to the Assessment Orders. In this regard, seeking certain clarifications of documents in a calculated manner, there is a possibility of collusion. In such circumstances, all these aspects cannot be gone into by this Court in writ proceedings. However, the fact remains that the petitioner has received four documents, pursuant to the orders of this Court and the said facts are admitted by the petitioner. Thus, certain documents were already furnished and the petitioner is of an opinion that some other documents are also required for the purpose of submitting their objections. By citing these reasons, the petitioner states that unless the documents are furnished, the respondents shall not be allowed to proceed with the assessment. Such a contention deserves no merit consideration. The availability or the non-availability of the documents with

the Department or the facts which all are to be adjudicated before the Appellate Authorities, the Appellate Authority is empowered to call for the records relied on by the Assessment Officer. In the event of availability of documents, the Appellate Authority is within his powers to permit the assessee to peruse the documents or furnish the copy of the same as the case may be. Such an opportunity may be available to the petitioner, to peruse the documents or receive the copies, by filing an appeal before the Appellate Authority. The High Court need not entertain a writ proceedings with reference to such disputed facts between the parties.

5. The writ petitions are filed in such circumstances seeking certain documents from the Departments internally knowing about certain facts happening in the Department. Thus High Courts are expected to be cautious, while dealing with such matters and such litigations are filed with an idea to prolong and protract the issues, which can never be encouraged by the Courts.

6. In such circumstances, the petitioner is expected to exhaust the appeal remedy. The appeals are not filed and the practice of filing writ petitions in order to avoid pre-deposit cannot be encouraged. The statutory remedy is to be exhausted by the aggrieved person.

7. This being the facts and circumstances, the petitioner is at liberty to file an appeal before the Appellate Authority in a prescribed format and by following the procedures contemplated. The Appellate Authority shall entertain the appeal and call for the records from the Original Authority and allow the petitioner to peruse the documents and furnish the copies, which all are necessarily to be furnished. The petitioner may be provided with an opportunity to submit his objections, if any, with reference to the documents perused and a personal hearing is also to be provided, if any such request is made by the petitioner by following the procedures. The Appellate Authority is directed to consider the grounds to be raised by the petitioner and pass orders on merits and in accordance with law, as expeditiously as possible. The petitioner in this regard is at liberty to file an appeal before the competent Appellate Authority within a period of four weeks from the date of receipt of the appeal. The Appellate Authority is directed to dispose of the same, as expeditiously as possible and preferably within a period of four months from the date of receipt of a copy of the appeal from the writ petitioner.

8. With these directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

Pns

To

The Assistant Commissioner (CT),
Omalur Assessment Circle,
Omalur.

+1 CC to Mr.R. Senniappan, Advocate Sr 28222.
+1 CC to The Special Government Pleader(Taxes), Sr 28083.

W.P.No.2935 of 2016
and W.M.P.No.1919 of 2016

LN(CO)
LS(19/07/2021)