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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.8.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Appeal Nos.2006, 2008, 2010, 2013
& 2017 to 2019 of 2021

&

CMP.Nos.12869, 12876, 12879, 12882, 12898, 12900
& 12906 of 2021

M/s.Integral Coach Factory,
rep.By its Executive Planning
Engineer-I, Chennai-38

...Appellant in all Writ Appeals

Vs

The Assistant Commissioner (CT),
Purasaiwalkam Assessment
Circle, F-50, 1st Avenue,
Anna Nagar (East),
Chennai - 600 102.

...Respondent in all Writ Appeals

APPEALS under Clause 15 of the Letters Patent against the orders dated 10.12.2020 respectively in W.P.Nos.31127, 31118, 31121, 31116, 31126, 31123 and 31122 of 2018.

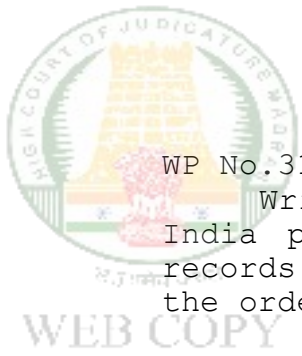
PRAYER IN WRIT PETITIONS:-

WP No.31127 of 2018:

Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari to call for the records of the respondent in TIN. 33901061892/2007-08 to 2012-13 and quash the order dated 19.09.2018 passed therein.

WP No.31118 of 2018:

Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari to call for the records of the respondent in TIN. 33901061892/ 2008-09 and quash the order dated 20.07.2017 passed therein.



WP No.31121 of 2018:

Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari to call for the records of the respondent in TIN. 33901061892/ 2009-10 and quash the order dated 20.07.2017 passed therein.

WP No.31116 of 2018:

Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari to call for the records of the respondent in TIN. 33901061892/ 2007-08 and quash the order dated 29.05.2017 passed therein.

WP No.31126 of 2018:

Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari to call for the records of the respondent in TIN. 33901061892/ 2012-13 and quash the order dated 3.07.2017 passed therein.

WP No.31123 of 2018:

Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari to call for the records of the respondent in TIN. 33901061892/ 2011-12 and quash the order dated 30.06.2017 passed therein.

WP No.31122 of 2018:

Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari to call for the records of the respondent in TIN. 33901061892/ 2010-11 and quash the order dated 30.06.2017 passed therein.

For Appellant : Mrs.Hema Muralikrishnan

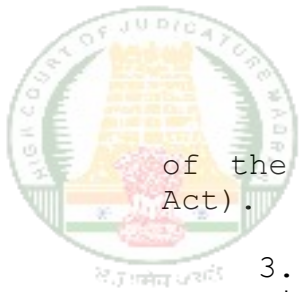
For Respondent : Mr.M.Venkateswaran, GA

COMMON JUDGMENT

(Judgment was delivered by T.S.SIVAGNANAM,J)

These appeals have been filed by the assessee - M/s.Integral Coach Factory represented by its Executive Planning Engineer-I, Chennai challenging the orders dated 10.12.2020 passed respectively in W.P.Nos.31127, 31118, 31121, 31116, 31126, 31123 and 31122 of 2018.

2. All the said writ petitions were dismissed by individual orders dated 10.12.2020 solely on the ground that the assessee should avail the alternate remedy provided under the provisions



of the Tamil Nadu Value Added Tax Act, 2006 (for short, the Act).

3. We have heard Mrs.Hema Muralikrishnan, learned counsel appearing for the appellant - assessee and Mr.M.Venkateswaran, learned Government Advocate accepting notice for the respondent - Department.

4. The place of business of the assessee was visited by the officials of the Enforcement Wing on 23.11.2015 and the Officials of the Enforcement Wing pointed out certain defects. Based on such opinion, the respondent - Assessing Officer issued notices dated 07.10.2016 for the relevant assessment years proposing to reopen the assessments and called for certain details namely (i) the details regarding purchase of vehicles from other States; (ii) the details of sale of railway coaches, bogies to other Departments; (iii) the details of export sale of railway passenger coaches, coach shell and bogies; and (iv) the details of export sale of railway coach spares.

5. Admittedly, the appellant did not file their reply nor furnished documents within the time permitted. Therefore, the Assessing Officer sent reminders dated 25.11.2016. In response to the reminders, the appellant, by letters dated 24.12.2016, sought two months' time. This request was accepted by the respondent and by communication dated 27.1.2017, the respondent granted time upto 10.2.2017. The assessee was directed to appear for the personal hearing on 03.2.2017. Further, by letters dated 06.2.2017, the appellant requested for three months' time to trace out the old records and file a reply. Further, the respondent, vide communications dated 20.2.2017, granted time upto 15.4.2017 and informed the appellant that no further time would be granted. The personal hearing was fixed on 03.3.2017, which was communicated by letters dated 29.2.2017. However, the appellant appears to have sought for one more adjournment vide letters dated 24.4.2017. However, the Assessing Officer, having taken the said letters dated 24.4.2017 on file, treated the same to be a reply to the show cause notices dated 07.10.2016 and completed the assessments.

6. The reasons assigned in all the assessments for the years from 2007-08 to 2012-13 and the basis, on which, the assessments were sought to be reopened were identical. The fact remains that no documents have been filed by the appellant despite grant of an opportunity. It cannot be stated that the respondent - Assessing Officer acted in an unreasonable manner, as she extended time on three occasions at the request of the appellant.

7. However, we are conscious of the fact that the appellant



is also a Central Government Department and the details sought for were from the year 2007-08 onwards. Hence, the appellant might have experienced certain difficulties in producing all the records.

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8. Be that as it may, even if the respondent is to proceed ex parte and make a best judgment assessment, there should be reasons assigned as to the satisfaction of the respondent - Assessing Officer to demand tax. Solely based upon the report of the Officials of the Enforcement Wing, the assessment cannot be completed since the Assessing Officer is an independent Authority and he or she cannot be compelled to take a decision in a particular manner by any superior authority.

9. After the assessment orders were passed, the assessee submitted a representation dated 28.11.2017 and produced all the records in their possession and also furnished the clarifications, which were sought for. However, the respondent did not afford an opportunity to the appellant, but treated the said representation dated 28.11.2017 as a petition under Section 84 of the Act though there was no specific reference to the said provision by the appellant in the said representation. But, the respondent proceeded to treat the said representation as a petition under Section 84 of the Act and rejected the same by order dated 19.9.2018 stating that there was no error apparent on the face of the orders of assessment.

10. The assessment orders as well as the order dated 19.9.2018 rejecting the said representation 28.11.2017 by treating the same as a petition under Section 84 of the Act were the subject matter of challenge in the said writ petitions and at the time of entertaining the said writ petitions, an order of interim stay was granted. The respondent filed a counter affidavit touching upon the merits of the matter. However, the learned Single Judge dismissed the said writ petitions solely on the ground of availability of an alternate remedy and that the Writ Court should not exercise powers under Article 226 of The Constitution of India assailing the orders passed by the Statutory Authorities, which were not appealed against within the maximum period of limitation prescribed before the concerned Appellate Authority.

11. An identical impugned order was tested for its correctness by a Division Bench of this Court, to which, one of us (TSSJ) was a party, in the case of Mahindra & Mahindra Ltd. Vs. JCIT [W.A.No. 493 of 2021 dated 18.2.2021] wherein a writ petition was dismissed on the same lines as that of the impugned orders herein. After taking note of the legal position, it was held that there was no absolute bar for entertaining writ petitions even if there is an alternate remedy. The relevant



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portions in the said judgment read thus :

"6. On a reading of the above extracted paragraphs, it is seen that the Hon'ble Supreme Court, after referring to the decision of the Constitution Bench in the case of Thansingh Nathmal, held that although the power of the High Court under Article 226 of the Constitution is very wide, the Court must exercise self imposed restraint and not entertain the writ petition. Further, in paragraph 15, the Hon'ble Supreme Court observed that the High Court may accede to such a challenge and can also non suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. In addition, in paragraph 19, the Hon'ble Supreme Court took note of the fact that when the High Court refuses to exercise the jurisdiction under Article 226 of The Constitution of India, it would be necessary for the Court to record that there was no case of violation of the principles of natural justice or non compliance of statutory requirements in any manner.

7. Therefore, there are certain broad parameters, within which, the Court has to exercise its jurisdiction under Article 226 of The Constitution of India, which read as hereunder :

(i) if there is unfairness in the action of the Statutory Authority;

(ii) if there is unreasonableness in the action of the Statutory Authority;

(iii) if perversity writs large in the action taken by the Authority;

(iv) if the Authority lacks jurisdiction to decide the issue and

(v) if there has been violation of the principles of natural justice,

the Court will step in and exercise its jurisdiction under Article 226 of The Constitution of India.

8. Further, it would be highly beneficial to refer to the celebrated decision of the Constitution Bench of the Hon'ble Supreme Court in the case of Mafatlal Industries Ltd. Vs. Union of India



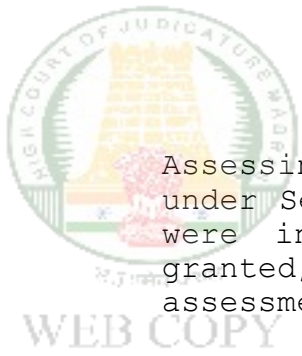
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[reported in 1997 (5) SCC 536] wherein it was held that the jurisdiction of the High Courts under Article 226 and that of the Hon'ble Supreme Court under Article 32 of The Constitution of India could not be circumscribed by the provisions of the Enactment (Central Excise Act) and they would certainly have due regard to the legislative intent evidenced by the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the Act. Further, the Court directed that the writ petition would be considered and disposed of in the light of and in accordance with the provisions of Section 11B of the Central Excise Tax Act and for such a reason, the power under Article 226 of The Constitution of India has to be exercised to effectuate rule of law and not for abrogating it.

9. In the light of the above, we have no hesitation to hold that the observation of the learned Single Judge to the effect that there is absolute bar for entertaining a writ petition does not reflect the correct legal position. Hence, we are inclined to interfere with the observation made in the impugned order."

12. In the light of the above legal position, we would be well justified in examining as to whether a reasonable opportunity was available to the appellant to put forth their submissions either before the respondent - Assessing Officer at the first instance or thereafter when the said representation dated 28.11.2017 was submitted.

13. Admittedly, the assessments from the year 2007-08 to 2012-13 were sought to be reopened and the entire reopening was on account of an inspection conducted by the respondent - Assessing Officer on 23.11.2015. Therefore, it cannot be stated that the appellant was deliberately avoiding to submit the documents. But, the Court can perceive the difficulties since the transactions were dated back as early as 2007 and there might have been difficulty in getting the documents and more particularly when the appellant is a Central Government Organization. Hence, the reasonable approach that should have been adopted by the respondent - Assessing Officer is to afford an opportunity to the appellant when they submitted their representation dated 28.11.2017 especially when the respondent -



Assessing Officer thought fit to treat the same as a petition under Section 84 of the Act. Since complicated questions of fact were involved, had an opportunity of personal hearing been granted, the respondent would have been able to complete the assessments on merits.

14. Thus, we are of the view that though the assessment orders were passed in the year 2017, they remain as paper orders and no tax was able to be recovered as they were stayed for all these years. Hence, we are also of the view that an adjudication has to be done on merits since the respondent filed an elaborate counter affidavit touching upon the merits of the case, which were never dealt with nor discussed in the assessment orders. We find that the matters require to be remanded to the respondent for a fresh consideration.

15. For all the above reasons, the writ appeals are allowed, the impugned orders dated 10.12.2020 are set aside and the writ petitions are allowed. The assessment orders for the years from 2007-08 to 2012-13 as well as the order dated 19.9.2018 and the consequential recovery notice dated 10.10.2018 are also set aside. The matters are remanded to the respondent for a fresh consideration. The respondent herein shall give 15 days clear notice to the appellant and direct the appropriate Officer of the appellant to appear for the personal hearing along with copies of records, which are in their possession. It appears that along with the said representation dated 28.11.2017, the records have been submitted. We also grant liberty to the appellant to submit another representation if need arises and participate in the proceedings before the respondent, who shall take note of all the documents and decide the matter on merits and in accordance with law. Since the assessments are for the years from 2007-08, the respondent shall endeavour to complete the assessments and pass final orders within four months from the date, on which, personal hearing is concluded. No costs. Consequently, the connected CMPs are closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

RS



To

The Assistant Commissioner (CT),
Purasaiwalkam Assessment Circle,
F-50, 1st Avenue, Anna Nagar (East),
Chennai- 600 102.

+2ccs to Mr.C.V.Ramachandramurthy, Advocate, S.R.No.41975 & 42539

+1cc to the Special Government Pleader, S.R.No.42530

WA.No.2006 of 2021
etc. cases

PM(CO)
SU(17/09/2021)