IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06-08-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.8195 of 2014
And
MP No.1 of 2014

Dennis Steels Pvt Ltd.,
Represented by its Managing Director,
Konath Jacob Dennis,
Ekku Nagar,
Arakkonam,
Vellore District. ..Petitioner

vs.

1. The Commercial Tax Officer,
   Arakkonam Assessment Circle,
   Arakkonam,
   Vellore District.

2. The Commissioner of Commercial Taxes,
   Tax Towers,
   Killippalam,
   Thiruvananthapuram-695 002. ..Respondents

Prayer

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the first respondent in CST 378531/2010-11 dated 14.02.2014 and quash the impugned proceedings dated 14.02.2014.

For Petitioner : Mr.R.Kumar

For Respondent-1 : Mr.V.Veluchamy,
Government Advocate.

For Respondent-2 : No Appearance

O R D E R

The assessment order passed by the first respondent in proceedings dated 14.02.2014 for the assessment year 2010-2011, is under challenge in the present writ petition.

2. The petitioner is a registered dealer on the files of the Commercial Tax Officer, Arakkonam Assessment Circle under the Tamil Nadu Value Added Tax Act, 2006. The petitioner is also a registered dealer under the Central Sales Tax Act, 1956. The petitioner is a manufacturer of TMT bars and effected local sales, interstate sales and also effect stock transfer to their branch situate at Mararikulam South, Alappuzha, State of Kerala.

3. The learned counsel for the petitioner made a submission that the Assessing Authority has not applied its mind with reference to the returns filed by the petitioner and the objections submitted were also not considered by the Competent Authority. Thus, there is violation of principles of natural justice.

4. However, hearing the arguments as advanced by the learned counsel for the petitioner, this Court is able to form an opinion that legal grounds are raised based on certain disputed facts and those disputed facts cannot be adjudicated in the writ proceedings under Article 226 of the Constitution of India.

5. Adjudication of disputed facts are to be done by the Competent Authority as well by the Appellate Authority based on the original documents and evidences to be made available.

6. Contrarily, the High Court cannot made a finding in respect of such disputed issues, merely on the basis of the affidavit filed by the parties. Thus, the petitioner-Company has to prefer an appeal for the purpose of redressal of their grievances in the manner known to law.

7. 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.

8. 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.

9. 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.

10. In view of the facts and circumstances, the petitioner is at liberty to prefer an appeal before the Jurisdictional Appellate Authority in the prescribed format and by complying with the provisions of the Act, 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 petitioner, shall consider the same on merits and in accordance with law and by affording an opportunity to the writ petitioner and dispose of the appeal as expeditiously as possible.

11. With the above 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 III)

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Commercial Tax Officer,
   Arakkonam Assessment Circle,
   Arakkonam,
   Vellore District.

2. The Commissioner of Commercial Taxes,
   Tax Towers,
   Killippalam,
   Thiruvananthapuram-695 002.

Copy to:-

The Section Officer,
ER Section, High Court,
Madras

(To return the original impugned order to the Counsel on record)

+1cc to Mr.R.Kumar, Advocate, S.R.No.38874
+1cc to the Government Pleader (Taxes), S.R.No.38997

WP 8195 of 2014

GPL(CO)
CT/25/08/2021