IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2021

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THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P.Nos.17551, 17552 & 17553 of 2021
and
W.M.P.Nos.18653, 18654 & 18655 of 2021

Tvl. Saravana Global Energy Ltd.,
Virudhachalam Road,
PN Kuppam,
Kurinjipadi - 607 302 ... Petitioner in all WPs

Vs.

Assistant Commissioner (CT)(FAC),
Cuddalore Taluk Assessment Circle,
Cuddalore. ... Respondent in all WPs

Writ Petition No.17551 of 2021 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the impugned order in TIN:33891561787/2013-2014 dated 10.07.2018, passed by the respondent herein, and quash the same.

Writ Petition No.17552 of 2021 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the impugned order in TIN:33891561787/2014-2015 dated 10.07.2018, passed by the respondent herein, and quash the same.

Writ Petition No.17553 of 2021 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the impugned order in TIN:33891561787/2015-2016 dated 10.07.2018, passed by the respondent herein, and quash the same.

For Petitioner in all WPs : Mr.T.Ramesh
For Respondent in all WPs : Mr.T.N.C.Kaushik
Government Advocate

C O M M O N O R D E R

This common order will dispose of captioned three main writ petitions and 'Writ Miscellaneous Petitions' [hereinafter 'WMP' in singular and 'WMPs' in plural for the sake of convenience and clarity] thereat.

2. Mr.T.Ramesh, learned counsel appearing on behalf of writ petitioner in all three writ petitions and Mr.T.N.C.Kaushik, learned State counsel i.e., Revenue counsel who accepts notice on behalf of lone respondent in all three writ petitions are before this Virtual Court.

3. Factual matrix in the captioned three writ petitions are common, with the consent of learned counsel on both sides main writ petitions were taken up and heard out.

4. The subject matter qua captioned writ petitions arises under the 'the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act No.32 of 2006)' [hereinafter 'TNVAT Act' for the sake of convenience and clarity].

5. The case of writ petitioner is that it is a manufacturer of Alumina Porcelain and Composite Insulators; that it is a registered dealer on the file of respondent under TNVAT Act besides being a registered dealer under Central Sales Tax Act, 1956; that there was assessment under TNVAT Act; that the assessment was deemed assessment under Section 22(2) of TNVAT Act; that thereafter proceedings were commenced touching upon reversal of ITC [Input Tax Credit] pertaining to inter-state trade; that writ petitioner earlier approached this Court by way of writ petitions vide W.P.Nos.17243 to 17246 of 2017; that those writ petitions came to be disposed of by a Hon'ble single Judge vide a common order dated 07.07.2017 inter-alia directing the earlier assessment to be treated as 'show cause notice' [hereinafter 'SCN' in singular and 'SCNs' in plural for the sake of convenience and clarity] so that opportunity is given to writ petitioner; that there is no disputation or disagreement that the earlier common order has been duly complied with and earlier assessment have been treated as SCNs and opportunity was given to the assessee and the same has now culminated in three separate orders dated 10.07.2018 bearing Reference Nos.TIN:33891561787/2013-2014, TIN:33891561787/2014-2015 and TIN:33891561787/2015-2016 respectively; that it is to be noted, that the three impugned orders pertain to three different assessment years namely, 2013-2014, 2014-2015 and 2015-2016; that assailing these impugned orders, captioned writ petitions have been filed.

6. Notwithstanding very many averments in the writ affidavit and notwithstanding very many grounds, learned counsel for writ petitioner, took a very professional approach and made pointed and focused submissions on one core ground. The core ground, according to learned counsel is that the writ petitioner had submitted C-forms earlier with a request to recompute the demand on the basis of the same, but the same has not been considered while making the impugned assessment. In this regard, learned

counsel for writ petitioner drew the attention of this Court to a representation dated 10.11.2018 made by writ petitioner (post impugned orders), drawing the notice of the Revenue to this fact and the most relevant paragraph is the penultimate paragraph and the same reads as follows:

> 'We request your goodself to kindly examine the details previously submitted by us an rectify and mistakes/errors apparent on record and also take into account the payments made by us and the C forms already submitted by us and to recompute the demand on the basis of the same.'

7. Learned counsel submitted that this is in the nature of seeking a rectification. According to learned counsel, this is rectification within the meaning of Section 84 of TNVAT Act.

8. In response to the aforementioned pointed submission, learned Revenue counsel who has accepted notice on behalf of lone respondent pointed out that the impugned orders have been made under Section 27(1) of TNVAT Act and penalty is under Section 27(3) of TNVAT Act. Learned Revenue counsel drew the attention of this Court to Section 51 of TNVAT Act and submitted that a statutory appeal is available for writ petitioner while assailing the impugned orders.

9. Learned Revenue counsel also submitted that this would not be a case of rectification much less rectification within the meaning of Section 84 of TNVAT Act.

10. I now embark upon the exercise of considering the rival submissions, discussing the same and giving my dispositive reasoning.

11. The first point that arises for consideration is whether the point urged would qualify as rectification within the meaning of Section 84 of TNVAT Act. Section 84 of TNVAT Act reads as follows:

> 'Section 84. Power to rectify any error apparent on the face of the record.- (1) An assessing authority or an appellate or revising authority (including the Appellate Tribunal) may, at any time within five years from the date of any order passed by it, rectify any error apparent on the face of the record:
>
> Provided that no such rectification which has the effect of enhancing an assessment or any penalty shall be made unless such authority has given notice

to the dealer and has allowed him reasonable opportunity of being heard.

(2) Where such rectification has the effect of reducing an assessment or penalty, the assessing authority shall make any refund, which may be due to the dealer.

(3) Where any such rectification has the effect of enhancing an assessment or penalty, the assessing authority shall give the dealer a revised notice of assessment or penalty and thereupon the provisions of this Act and the rules made thereunder shall apply as if such notice had been given in the first instance.

(4) The powers under sub-section (1) may be exercised by the assessing authorities even though the original order of assessment, if any, passed in the matter has been the subject matter of an appeal or revision.

(5) The provisions of this Act relating to appeal and revision shall apply to an order or rectification made under this section as they apply to the order in respect of which such order of rectification has been made.'

12. A careful perusal of Section 84 of TNVAT Act and more particularly the language in which Section 84 of TNVAT Act is couched, makes it clear that it is a provision which is for rectifying errors apparent on the face of the record and such power is vested with the Assessment Authorities, Appellate Authorities and Revisional Authorities besides Tribunals. This provision is akin to Section 152 of 'the Code of Civil Procedure, 1908' [hereinafter 'CPC' for the sake of brevity]. Therefore, in assessment proceedings, if there is grievance qua certain points raised or certain materials placed before original authority not having been considered, that can qualify as a ground for appeal but cannot be slithered through as a rectification. Rectification is necessarily for errors that may have crept in and more particularly, errors which may have crept in inadvertently. Therefore, Section 84 of TNVAT does not come to the aid of writ petitioner in the captioned writ petitions. This takes me to the next aspect of the matter namely, alternate remedy. Alternate remedy no doubt is not a rule of compulsion and it is not an absolute rule. In other words, alternate remedy is only a rule of discretion. To put with clarity and specificity alternate remedy qua proceedings under Article 226 of the Constitution of India, is clearly a rule of discretion

and it is a self imposed restraint. However, this Court reminds itself that the Hon'ble Supreme Court, has repeatedly held that in fiscal statutes this rule of restraint has to be applied with utmost rigour. The lead case laws in this regard are (i) Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd., and others reported in (1985) 1 SCC 260, (ii) United Bank of India Vs. Satyawati Tondon and others reported in (2010) 8 SCC 110 and (iii) Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C. reported in (2018) 3 SCC 85. Relevant paragraph in Dunlop case is paragraph No.3 and relevant portion of the same reads as follows:

> '3. .... Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged.'
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> (Underlining made by this Court to supply emphasis and highlight)

13. Satyawati Tandon principle was reiterated by Hon'ble Supreme Court in K.C.Mathew case. Relevant paragraph in K.C.Mathew case is paragraph 10 and the same reads as follows:

> '10. In Satyawati Tondon the High Court had restrained further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding: (SCC pp.123 & 128, Paras 43 & 55)

"43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this Rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

55.It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.'

(underlining made by this Court to supply emphasis and highlight)

14. I have already taken the above view regarding alternate remedy qua fiscal law by respectfully following Dunlop India, Satyawati Tandon and K.C.Mathew principles of Hon'ble Supreme Court vide order dated 28.06.2019 made in W.P.No.17804 of 2019. This order was carried in appeal by way of a intra-court appeal and a Hon'ble Division Bench of this Court vide judgement dated 10.02.2020 made in W.A.No.196 of 2020 has sustained this view and dismissed the writ appeal. Therefore, I respectfully follow the ratio of Hon'ble Division Bench of this court in this regard.

15. With regard to ITC reversal, a learned single Judge of this Court Hon'ble Mr.Jusice Rajiv Shakdher (as his Lordship then was) has rendered a judgement in Everest Industries Limited Vs. State of Tamil Nadu reported in (2017) 100 VST 158. This Court is informed by both sides that there is an appeal by way of intra-court appeal and a Hon'ble Division Bench is now in seizin of the matter.

16. Be that as it may, in the case on hand, if the principles qua alternate remedy are applied, I find that there is no impediment whatsoever for writ petitioner to file statutory appeal under Section 51 of TNVAT Act. This is more so, as this is the second round of litigation. (as already alluded to supra, the earlier assessment was assailed by way of four writ petitions by writ petitioner where this Court had directed the assessment orders to be treated as SCNs so that opportunity can be given the same has been done and impugned orders have been passed). Therefore, there is no reason much less compelling reason to demonstrate that the appeal remedy cannot be resorted to in the case on hand. In this regard, this Court reminds itself that there are some well carved out exceptions qua alternate remedy restraint rule i.e., exception such as orders being passed without jurisdiction, Appellate Authority not being operational or pre-determinant disposition etc., It is nobody's case before this Court that the captioned matters fall under any of the exceptions qua the alternate remedy rule. At this juncture, this Court is informed that owing to earlier rounds of litigation, already certain deposits have been made by assessee and that there is also a time frame for preferring the appeal. This Court considers it appropriate to dispose of the captioned writ petitions by passing the following order:

(a) Writ Petitions are disposed of, holding that it is for writ petitioner to avail alternate remedy under Section 51 of TNVAT Act, if so advised;

(b) Owing to the above, though obvious, it is made clear that no view or opinion is expressed in this order on the merits of the matter;

(c) If the writ petitioner chooses to file a statutory appeal under Section 51 of TNVAT Act, qua impugned orders, the Appellate Authority shall deal with the same on its own merits and in accordance with law;

(d) Appeals, if filed, the sums already deposited by writ petitioner shall be taken into account with regard to pre-deposit requirement for appeal;

(e) With regard to limitation before the Appellate Authority, it is open to writ petitioner to seek exclusion of time spent in this Court by resorting to Section 14 of TNVAT Act and also to seek condonation of delay (COD) and if the writ petitioner assessee chooses to do so, it is open to the Appellate Authority to deal with the same on its own merits and in accordance with law;

17. Captioned Writ Petitions are disposed of in the aforementioned manner. Consequently, connected WMPs are closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To
The Assistant Commissioner (CT)(FAC),
Cuddalore Taluk Assessment Circle,
Cuddalore.

Copy to :

1.The Appellate Deputy Commissioner (CT),
Cuddalore

2.The Section Officer, ER Section,
High Court, Madras
(to return original impugned orders to the petitioner)

+1CC to Mr.T.Ramesh, Advocate, Sr.No.43149
+1CC to Mr.Government Pleader (Taxes), Sr.No.42787

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GPL (CO)
K.RK. (20.09.2021)