



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2021

CORAM

The Honourable Mr. Justice T.S. SIVAGNANAM  
and

The Honourable Mr. Justice SATHI KUMAR SUKUMARA KURUP

WA.Nos. 2222, 2226, 2229 and 2242 of 2021

M/s. All India Metal and Alloys  
Represented by its Proprietor  
No.17, Singanna Naicken Street  
First Floor, Chennai - 600 001.

.. Appellant/Petitioner  
in all WAs

-vs-

The Assistant Commissioner  
Harbour-IV Assessment Circle  
Chennai.

.. Respondent/Respondent in all WAs

COMMON PRAYER :: Writ Appeals filed under Clause 15 of Letters Patent, praying to set aside Common order dated 15.06.2021 made in W.P.Nos. 9286 to 9289 of 2014 on the file of this Hon'ble Court.

Common Prayer in W.P.Nos.9286 to 9289 of 2014:

Petition filed under article 226 of the Constitution of India praying for issuance of writ of certiorarified mandamus to call for the impugned proceedings of the respondent TIN/33880061057/2009-10, TIN/33880061057/2010-11, TIN/33880061057/2011-12 and TIN/33880061057/2012-13, and quash the impugned orders dated 26.02.2014, 26.02.2014, 27.02.2014 and 27.02.2014 respectively as passed contrary to the principles of natural justice and further direct the respondent to provide the copies of the details/documents requested by the petitioner in its objections dated 18.11.2013 and 06.12.2013 and thereafter proceed to pass an order if need be in accordance with law.

For Appellant : Mr. P.Rajkumar (for all WAs)

For Respondent : Mr. M.Venkateswaran (for all WAs)  
Government Advocate

\*\*\*\*\*



## C O M M O N    J U D G M E N T

(Delivered by T.S.Sivagnanam, J.)

These Appeals have been filed by the Writ Petitioner challenging the common order in W.P. Nos. 9286 to 9289 of 2014 and 18022 to 18025 of 2016 dated 15.06.2021.

2.The Writ Petitions were filed challenging the assessment orders passed by the Respondent under the provisions of the Tamilnadu Value Added Tax Act, 2006 [hereinafter referred to as 'the TNVAT' for short] dated 26.02.2014, 26.02.2014, 27.02.2014 and 27.02.2014 for the Assessment Years 2009-10, 2010-11, 2011-12 and 2012-13 respectively.

3.The Appellants primarily challenged the assessment orders on the ground of violation of principles of natural justice in as much as the documents and details sought for by the Appellant have not been furnished. The Appellant, therefore, sought for a consequential direction upon quashing the assessment orders to provide copies of the documents / details requested by them in their letters dated 18.11.2013 and 06.12.2013 and thereafter, to proceed to pass an order in accordance with law. The Learned Writ Court has dismissed the Writ Petitions, solely on the ground of availability of alternate remedy. In this regard, certain decisions have been referred, to support the conclusion arrived at by the Learned Writ Court that the Appellant is bound to exhaust the statutory appellate remedy as provided under the TNVAT Act. Therefore, liberty was granted to the Appellant to file an Appeal or Revision by following the procedures under the TNVAT Act. The Appellate Authority was also directed to condone the delay, if there is any delay in filing Appeal/Revision. Thus, the question, which falls for consideration, is whether the availability of an alternative remedy is an absolute bar for entertaining the Writ Petitions. As pointed out earlier, the Learned Writ Court had relied upon certain decisions of the Hon'ble Supreme Court to state that the Appellant is bound to exhaust the alternative remedy available under the TNVAT Act.

4. In a recent decision of the Hon'ble Supreme Court in Radha Krishnan Industries -vs- State of Himachal Pradesh reported in [2021 SCC Online SC 334], one of the questions, which fell for consideration, is that whether the writ petition challenging the orders of provisional attachment under the provisions Himachal Pradesh Goods and Services Tax Act was maintainable, when the Act provides for an alternative remedy? The Hon'ble Supreme Court first proceeded to decide the maintainability of the Writ Petition and in paragraph Nos. 24 to 27 of the judgment it was held as follows :-

"24. We shall now review the position of law on the



WEB COPY

questions before us.

C.1 Maintainability of writ petition before the High Court

25. The High Court has dealt with the maintainability of the petition under Article 226 of the Constitution. Relying on the decision of this Court in Assistant Commissioner (CT) LTU, Kakinada v. Glaxo Smith Kline Consumer Health Care Limited, the High Court noted that although it can entertain a petition under Article 226 of the Constitution, it must not do so when the aggrieved person has an effective alternate remedy available in law. However, certain exceptions to this "rule of alternate remedy" include where, the statutory authority has not acted in accordance with the provisions of the law or acted in defiance of the fundamental principles of judicial procedure; or has resorted to invoke provisions, which are repealed; or where an order has been passed in violation of the principles of natural justice. Applying this formulation, the High Court noted that the appellant has an alternate remedy available under the GST Act and thus, the petition was not maintainable.

26. In this background, it becomes necessary for this Court, to dwell on the "rule of alternate remedy" and its judicial exposition. In Whirlpool Corporation v. Registrar of Trademarks, Mumbai, a two judge Bench of this Court after reviewing the case law on this point, noted:

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any



WEB COPY

of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

(emphasis supplied)

27. Following the dictum of this Court in Whirlpool (supra), in Harbanslal Sahnia v. Indian Oil Corpn. Ltd. , this court noted that:

"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies : (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1].) The present case attracts applicability of the first two contingencies. Moreover, as noted, the appellants' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

The above principles of law laid down by the Hon'ble Supreme Court will guide us to take a decision in these appeals.

5. The Appellant is a registered dealer on the file of the Respondent under the provisions of the TNVAT Act and the Central Sales Tax (CST) Act, 1956. The assessment for the years under consideration were initially completed. The place of business of the Appellant was inspected by the Enforcement Wing Officials on 16.08.2012. During which, certain defects were alleged to have



been found. On the basis of the alleged defects, which were found during such inspection, the Assessing Officer issued notices dated 06.11.2013 alleging that the Appellant has wrongly availed Input Tax Credit ('ITC' for short) on the purchases effected from the Registration certificate cancelled dealers. The name of the seller, the assessment circle of the seller, the date of cancellation and the amount of tax were mentioned in a tabulated format for the relevant assessment years. To be noted that the date of invoice and invoice numbers were not furnished.

6. The Assessing Officer referred to Section 17 (2) of the TNVAT Act and stated that for the purpose of claiming ITC, the burden of proving such claim shall lie on the Appellant-dealer. The Assessing Officer also referred to Section 19(1) of the TNVAT Act and stated that there shall be ITC of the amount of tax paid or payable under the TNVAT Act, by the registered dealer to the seller on its purchases of taxable goods specified under the TNVAT Act that the registered dealer, who claims ITC, shall establish that the tax due on such purchases has been paid by him in the manner prescribed.

7. Therefore, the Assessing Officer stated that the dealer should pay the wrong claim of ITC amount availed along with interest as per provisions of Section 19(15) of the TNVAT Act. Simultaneously, the Appellant dealer was requested to file their reply with supporting documents within a time frame, failing which action will be taken to revise the assessment.

8. Though the notices do not specifically mention under which provision of law they have been issued, the only provision to which the Assessing Officer can trace his power is under Section 27 of the TNVAT Act. The Appellant had filed their objections on 18.11.2013 denying the allegations made in the notices and stating that on the date, when the said purchases were effected the Registration certificate of the selling dealer was valid, the taxes were paid on the said purchases and the goods have been delivered by the seller to the purchaser.

9. Further, the Appellant pointed out that when the search was made by them in the official portal of the Sales Tax Department, it showed a different date of the order of cancellation of the Registration and the Appellant stated that invariably, it would be a case of retrospective cancellation and therefore, they requested the Assessing Officer to furnish the following details :-

- 1.The date of issue of TN Number (Registration) to the registration cancelled dealers relied on by the Assessing Officer.
- 2.Whether the Registering Authority made any verification of the place of business of the above



WEB COPY

dealer after the TIN Number was issued, as per the guidelines issued by the Commissioner of Commercial Taxes.

3. In case, any verification has been made after issues of Registration, to find out the genuineness of the registration cancelled dealer, a Xerox copy of the verification report of the official who verified, may please furnished.
4. Whether the registration cancelled dealer has filed returns, as required under Sec 21 of TNVAT Act from the date of issue of Registration till the date of his cancellation of Registration.
5. In case, the registration cancelled dealer has not filed any returns both under TNVAT Act / CST Act, what action the Assessing Authority, has taken to obtain the returns or to make a best judgment Assessment.
6. Xerox copy of notices, if any issued to the registration cancelled dealer, to file his returns, wherever, the dealer fail to file returns.
7. The tax paid and ITC availed as per returns filed by the registration cancelled dealer may please be furnished separately, year wise and month wise, in the following form.

| Month and Year | Details                                                | Amount |
|----------------|--------------------------------------------------------|--------|
|                | ITC Claimed                                            |        |
|                | Output Sales                                           |        |
|                | Details of purchases noted in Annexure - I to Form - I |        |
|                | Details of sales noted in Annexure - II to Form - I    |        |

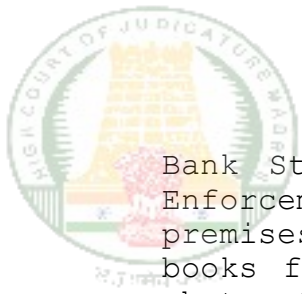
8. The details of declaration forms, such as C-FORM, E-I or E-II or Form-H issued to the registration cancelled dealers, year wise.
9. The details of declaration forms, such as C-FORM, E-I or E-II or FORM-H forms filed by the registration cancelled dealer, for his sales under CST Act separately for each year, from the date of issue of registration.
10. Whether any Assessment order has been passed accepting the returns filed by the registration cancelled dealer, under TNVAT Act and CST Act, year wise.
11. In case, Assessment order has been passed, a Xerox copy of Assessment order passed for each year under TNVAT Act and CST Act, in respect of



WEB COPY

- the registration cancelled dealer may please be furnished, year wise.
- 12.The details of arrears if any due from registration cancelled dealer may please be furnished separately, year wise.
  - 13.Whether the Registering Authority, has made any verification at the place of business of the registration cancelled dealer, prior to cancellation of his Registration, as required in Law, and if so with what result, a Xerox copy the verification report may please be furnished. Please also state whether the registration was cancelled as per the provision of Sec 39 (14) and (15) of TNVAT Act, after giving opportunity for personal hearing.
  - 14.A Xerox copy of the orders passed by the Registering Authority, for cancellation of Registration, under TNVAT Act and CST Act, in respect of registration cancellation dealer may please be furnished, as retrospective cancellation of registration is not valid in law.
  - 15.Whether the Assessing Authority has made any Assessment or revision of Assessment in respect of the turnover reported in the returns for the Assessment year 2009-2010, even though their registration has been cancelled with retrospective effect, they have sold goods actually, covered by proper sale invoice, wherein TIN No issued by the Department is available, and collected tax from us. Therefore, the Assessing Authority should make an Assessment to collect the taxes, what they have collected from us on sale of the goods. These details are required along with Xerox copy of the orders passed by the Assessing Authority, bringing the taxes involved on the sale invoices, in to the tax net.
  - 16.A Xerox copy of the application for registration in Form-A filed before the Assessing Authority for registration of the business.
  - 17.The details of persons introduced to open Bank account by the registration cancelled dealer, may please be furnished with their address.
  - 18.A Xerox copy of rental agreement filed by registration cancelled dealer before the Registering Authority may please given to me at my cost.
  - 19.A Xerox copy of statement recorded from registration cancelled dealer either at the time of giving registration or at the time of verification of the place of business may please





WEB

Bank Statement. The Appellant stated that the officer of the Enforcement (North) Group-III, who inspected the business premises of the Appellant on 16.08.2012, have taken away all the books for checking and returned the same on 24.08.2012 and the photo-stat copies of the list of books taken by them was attached for the ready reference of the Assessing Officer and therefore, stated that the question of producing books once over and again does not arise.

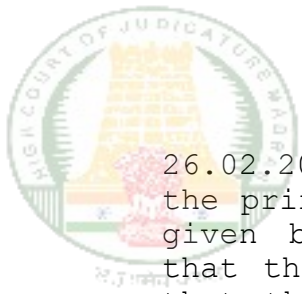
11. With regard to the non-maintaining of the Stock records as per the provisions of the TNVAT Act, the Appellant stated that they have already paid the compounding fee, and on the very same ground, the Appellant cannot be penalised for the second time. The Appellant specifically sought for an opportunity of personal hearing before passing the order to prove that the transactions are genuine.

12. The Appellant case is that the said objections / reply dated 06.12.2013 was submitted in the office of the Respondent on 09.12.2013 and to that effect, an acknowledgement was given in the letter delivery book. The Assessing Officer by orders dated 26.02.2014, 26.02.2014, 27.02.2014 and 27.02.2014 has completed the assessment.

13. Among other things, the Assessing Officer has held that no objection was filed by the Appellant to the notice dated 03.12.2013 and proceeded to confirm the proposal of levying penalty as proposed in the revision notices. Therefore, the Appellant approached the Writ Court stating that there has been serious violation of principles of natural justice and in such circumstances, the Appellant is entitled to invoke the remedy under the Article 226 of the Constitution of India, and that the Writ Petitions were maintainable.

14. The Writ Petitions were entertained in the year 2014 and an order of interim stay was granted, and the order of interim stay continued to be in force till the disposal of the Writ Petitions vide order dated 15.06.2020.

15. In the light of the recent decision of the Hon'ble Supreme Court as cited supra, one of the exceptions, which has been drawn, for permitting an aggrieved person to approach this Court and invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, despite availability of an alternate remedy, is when there is violation of principles of natural justice. We need not labour much to investigate and ascertain as to whether the Respondent had received the reply dated 06.12.2013, since the Assessing Officer in the Counter-affidavit filed in the Writ Petitions has accepted that the reply dated 06.12.2013 was received. If such is the case, it goes without saying that the Assessment orders dated 26.02.2014,



26.02.2014, 27.02.2014 and 27.02.2014 passed are in violation of the principles of natural justice. That apart, in the objections given by the Appellant dated 18.11.2013, apart from pointing that the selling-dealer's registration was very much valid, and that they have been filing e-returns, the Appellant sought for 23 details/documents, which have been listed above, and the Assessing Officer does not dispute the fact that he has received the reply / objections dated 18.11.2013. But without taking note of the request made by the Appellant, the second notice dated 03.12.2013 has been issued once again alleging that the Appellant has purchased from the Registration certificate cancelled dealers and in addition, that the Appellant has not filed any proof for physical movement of goods the assessments were completed.

16. Had the Respondent furnished the details / documents sought for by the Appellant in their reply / objections dated 18.11.2013 or given a reply to the said communication, with regard to the Appellant entitlement to seek any of or all of 23 details and documents, it would have been a different matter?

17. However, the Respondent has virtually ignored the reply dated 18.11.2013, wherein the Appellant, apart from giving its preliminary objections for the revision of assessment, has also sought for certain details and documents. That apart, there has been a specific request made by the Appellant in the representation 18.11.2013 to grant an opportunity of personal hearing. This has also been brushed aside, while issuing the second notice dated 03.12.2013. That apart, in the Assessment orders the Assessing Officer has stated that the Appellant has not furnished any reply to the second notice, whereas it has been admitted in the Counter-affidavit that the reply / objections dated 06.12.2013 has been received.

18. Therefore, we are of the clear view that there have been gross violation of principles of natural justice, which would justify our stand that the Appellant is entitled to invoke the extraordinary jurisdiction of this Court and consequently, Writ Petitions are held to be maintainable.

19. For all the above reasons, we are inclined to interfere the common order passed by the Learned Writ Court and issue certain directions, so that the assessments can be completed, after complying with the principles of natural justice.

20. Accordingly, the Writ Appeals are allowed and the orders passed in the Writ Petitions are set aside and the assessment orders impugned in the writ petitions are quashed and these matters are remitted to the Assessing Officer and the Assessing Officer is directed to issue notice to the Appellant to appear



in-person and during their personal appearance, the Appellant is directed to submit a further reply, clearly specifying as to what are all documents and details they would require and on such written request, the Assessing Officer shall consider and provide copies of the available details/ documents, or if the details and documents are very voluminous, the representative of the Appellant would be entitled to peruse the details and documents in the office of the Respondent and after furnishing/ perusal, within 15 days therefrom, a fresh objection shall be given by the Appellant to the proposals made in both the notices dated 06.11.2013 and 03.12.2013 and on receipt of the objections, the respondent shall afford opportunity of personal hearing to the authorised representative of the Appellant and re-do the assessment in accordance with law.

21. On the above terms, these Writ Appeals are allowed. No costs.

Sd/-  
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

Sp/Maya  
To

1.The Assistant Commissioner(CT) (FAC)  
Harbour-IV Assessment Circle  
Chennai.

2.The Assistant Commissioner(CT)  
Peddunaickenpet Assessment circle,  
Rajaji Salai, Chennai-600 001.

3.The Deputy Commissioner (CT)  
Enforcement(North)  
PAPJM Buildings, Chennai-600 006.

Copy to:  
The Section Officer,  
E.R.Section,  
High Court, Madras.

+1cc to Mr.P.Rajkumar, Advocate, S.R.No.45714  
+1cc to Special Government Pleader(Taxes), S.R.No.45984

WA.Nos. 2222, 2226, 2229 & 2242 of 2021

SRA(CO)  
CB(22/10/2021)