IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2021

CORAM

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

W.P.Nos.6326 to 6334 of 2016
and
W.M.P.Nos.5633 to 5641 of 2016

In W.P.No.6326 of 2016:

Tvl.Kushal Metal Industries,
Rep.by its Sole Proprietrix,
No.107, Lingi Chetty Street,
Chennai - 01.

...Petitioner in all W.P.s

Vs

The Commercial Tax Officer,
Harbour Assessment Circle,
Chennai.

... Respondent in all W.P.s

PRAYER in W.P.No.6326 to 6334 of 2016:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the order of the respondent dated 29.01.2016 in TIN/33620021012/2006-07, TIN/33620021012/2007-08, TIN/33620021012/2008-09, TIN/33620021012/2009-10, TIN/33620021012/2010-11, TIN/33620021012/2011-12, TIN/33620021012/2012-13, TIN/33620021012/2013-14, TIN/33620021012/2014-15, respectively and quash the same.

For Petitioner : Mr.Adithya Reddy in all Wps.

For Respondent : Mr.V.Veluchamy
Government Advocate in all WPs.

COMMON ORDER

These writ petitions are filed challenging the Assessment Orders passed by the Assessing Authority under the provisions of the TNVAT Act, 2006.

2. Admittedly, the impugned orders are appealable orders. The petitioner is a dealer in steel tubes and is registered on the file of the respondent under the Tamil Nadu Value Added Tax Act. The Assessing Authority issued notice and based on the objections submitted by the petitioner, the assessment order was passed. The petitioner instead of preferring an appeal under the statutes, has chosen to file these writ petitions.

3. The writ petitions are filed against the orders in original /assessment orders in order to avoid pre-deposit filed in the writ petition. Thus, High Court cannot entertain such writ petitions filed without exhausting the appellate remedy.

4. 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.

5. 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.

6.The point of delay may be an acceptable ground for the purpose of entertaining a Writ Petition. The practice 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.

7. In view of the facts and circumstances, the petitioner is at liberty to prefer an appeal before the Competent Appellate Authority in the prescribed format and by complying with the provisions of the Act. In the event of any such appeal, the appellate authority is bound to consider the same and pass orders on merits and in accordance with law by affording opportunity to the petitioner as expeditiously as possible.

8. With these observations, all these writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy//

Sub Assistant Registrar

Pns

To

The Commercial Tax Officer,
Harbour Assessment Circle,
Chennai.

+2ccs to the Special Government Pleader(Taxes),
S.R.No.34078,33006

W.P.Nos.6326 to 6334 of 2016
and
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UM(CO)
SU(17/08/2021)