IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.07.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.14521 to 14523 of 2014
and
M.P.No.1 of 2014 (In each case)

M/s.General Traders (Chennai) Pvt. Ltd.,
Now known as GT India Pvt. Ltd.,
Rep., by its Director, Mr.Arvind Kumar,
Now at No.249, Sydenhams Road,
Chennai-3. .. Petitioner in all W.Ps.

-vs-

The Commercial Tax Officer,
Sowcarpet-II Assessment Circle,
N.S.C.Bose Road, Chennai. .. Respondent in all W.Ps.

Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the respondent in TIN.33620241620/2007-08, TIN.33620241620/2008-09 and TIN.33620241620/2009-10 dated 08.05.2014 and quash the same and further direct the respondent that the MSG is classifiable under Entry 1 of the Part B of First Schedule of TNVAT Act .

For Petitioner (In all W.Ps.)	:	Ms.C.Rekha Kumari
For Respondent (In all W.Ps.)	:	Mr.V.Veluchamy, Government Advocate

COMMON ORDER

The orders impugned dated 08.05.2014 passed by the respondent-Commercial Tax Officer are under challenge in the present writ petitions.

2.The learned counsel for the petitioner made a submission that the facts as well as the circumstances in the present writ petitions are akin to that of the facts and circumstances considered and decided by this Court in the case of M/s.Ajinomoto India Pvt. Ltd., & Anr. vs. State of Tamil Nadu, Rep., by its Secretary to the Government of Tamil Nadu & Ors. [W.P.Nos.28794 to 28796 of 2010 dated 27.11.2019]. However, the learned Government Advocate appearing on behalf of the respondent made a submission that against the said order, the State preferred Writ Appeals.

3.When the State preferred appeal, it is not preferable to follow the said order in a routine manner, which would cause unnecessary multiplication of litigation and also hardship to the litigants. In such circumstances, the petitioner has to prefer appeal before the appellate authority for adjudication of facts and circumstance as well as the grounds on merits and if at all, the appellate authority is of an opinion that the issues raised are similar to that of the issues already pending before this Court, then the appellate authority is empowered to invoke Section 23 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "the TNVAT Act") and keep the appeal pending. Contrarily, High Court need not keep the writ petition pending for an indefinite period, when the order relied on by the petitioner is taken by way of appeal by the State before the Hon'ble Division Bench.

4.This Court is of the considered opinion that even at the first instance, the petitioner is expected to exhaust the appellate remedy contemplated under the provisions of the TNVAT Act and no writ petition needs to be entertained before exhausting the appellate remedy. Even otherwise also, the petitioner is bound to prefer an appeal on merits and adjudicate the merits with reference to the documents and evidenced made available, as the appellate authority is the final fact finding authority. In the present case, the order relied on by the petitioner is also taken by way of appeal by the State.

5.This being the factum, the petitioner is at liberty to prefer an appeal before the jurisdictional appellate authority under the provisions of the TNVAT Act and in the event of filing any such appeal in a prescribed format by complying with the provisions of the TNVAT Act, the appellate authority shall entertain the same by condoning the delay, if any, adjudicate the appeal on merits and in accordance with law by affording opportunity to the writ petitioner and dispose of the same as expeditiously as possible.

With the above directions, these writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

abr

To
The Commercial Tax Officer,
Sowcarpet-II Assessment Circle,
N.S.C.Bose Road, Chennai.

Copy to:
The Sub Assistant Registrar,
ER Section, High Court,Madras.

(To return the impugned order)

+3ccs to Ms.C.Rekha Kumari, Advocate SR.No. 35534
+1 cc to Spl Government Pleader(Taxes) Sr.No. 36091

W.P.Nos.14521 to 14523 of 2014

A.SK(18.08.2021)