IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06-08-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.35086 of 2014
And
MP No.1 of 2014

Tvl.Senthil Andavar Agencies,
Represented by its Partner,
S.Selvapandiyan,
No.5, Jaheer Hussain Street,
Mannargudi - 614 001. ...Petitioner

vs.

The Commercial Tax Officer (CT),
Mannargudi Assessment Circle,
C.T.Buildings,
Mannargudi. ...Respondent

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 relating to the proceedings of the respondent in TNGST 3861679/2005-2006 dated 23.04.2013 and quash the same as illegal, arbitrary and without jurisdiction.

For Petitioner : Mr.Arun for Mr.K.Soundararajan

For Respondent : Mr.V.Nanmaran,
Government Advocate.

O R D E R

The assessment order passed by the respondent in proceedings dated 23.04.2013 for the assessment year 2005-2006, is under challenge in the present writ petition.

2. The petitioner is a dealer in general goods and a registered dealer under the Tamil Nadu Value Added Tax Act. During the year 2005-2006, the petitioner had reported a total and taxable turnover and and resale tax.

3. The respondent accepted the returns and passed an assessment order on 30.03.2007. However, the respondent

surprisingly visited the partner and demanded a sum of Rs.3,50,000/- as arrears to the assessment year 2005-2006.

4. The petitioner raised certain procedural irregularities committed by the respondent at the time of passing the order.

5. It is needless to state that while passing the order of assessment, the Authorities Competent are bound to follow the procedures as contemplated under the provisions of the Act and Rules.

6. In the present case, the petitioner has raised certain factual disputes also. Those disputed facts are to be adjudicated with reference to the documents and evidences and such an adjudication cannot be done in the writ proceedings under Article 226 of the Constitution of India. Thus, the petitioner-Agency 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.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

Svn

To

The Commercial Tax Officer (CT),
Mannargudi Assessment Circle,
C.T.Buildings,
Mannargudi.

+1cc to Special Government Pleader, Sr.38998
+1cc to M/s.K.Soundara Rajan, Sr.39526

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NSK 27/08/2021