IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2021

CORAM

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

W.P.Nos.17601 to 17606 of 2014
and
W.M.P.Nos.2, 2, 2, 2, 2 & 2 of 2014

Hwashin Automotive India (P) Limited
rep.by its Managing Director,
Mr.Youn Gyu Park,
F-65-A, SIPCOT Industrial Estate,
Irrungattukottai, Sriperumbudur,
Chennai - 602 105. ...Petitioner in all WPs.

Vs

The Deputy Commissioner (CT) - II
Large Taxpayers Unit,
Chennai - 600 008. ... Respondent in all WPs.

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue Writs of Certiorari, calling for the records on the files of the respondent herein in TIN Nos: 33431662388/2007-08, 33431662388/2008-09, 33431662388/2009-10, 33431662388/2010-11, 33431662388/2011-12 & 33431662388/2012-13 dated 28.05.2014 and quash the same.

For Petitioner : Mr.N.Sriprakash in all Wps.

For Respondent : Mr.V.Veluchamy
Government Advocate
..in all writ petitions

COMMON ORDER

The Revision of Assessment passed in the order dated 28.05.2014, is under challenge in these writ petitions.

2. The petitioner is a Company incorporated under the Companies Act, 1956 and they are registered dealers under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956 on the file of the respondent.

3. The petitioner Company is engaged in the business of manufacture and sales of automobile steel components, i.e. Body and chassis components. 100% of the sales of the petitioner is only to Original Equipment Manufacturers [OEM], like M/s.Hyundai Motor India Limited [HMIL] and M/s.MOBIS India Limited [MIL]. Out of the same, nearby 95% constitutes sales effected by the petitioners to HMIL. During the assessment years VAT/2007-08 to 2012-13, the sales of the auto parts as aforesaid were reported by the petitioner in their monthly returns filed under the Act. The petitioner Company is also charged and paid 4% VAT up to 11.07.2011 and 5% VAT from 12.07.2011 on the sales so effected in terms of Section 3(2) of the Act read with Serial No.67 of Part-B of the First Schedule to the Act. The goods sold by the petitioners were in turn used by all their buyers in their manufacturing operations inside the State of Tamil Nadu. The deemed assessments of the petitioner for the aforesaid years were also completed in terms of the first proviso to Section 22 (2) of the Act.

4. The learned counsel appearing on behalf of the writ petitioner strenuously contended that the revisional order is directly in violation of the provisions of the Act and Rules. During the pendency of the writ petition, the Madras High Court settled the legal proposition with reference to the production of Industrial Input Certificate by interpreting the relevant rules, more specifically, Section 6 (3) (b) of the Act. Relying on the said judgments, the learned counsel for the petitioner is of an opinion that the writ petition is entertainable and the appeal remedy need not be exhausted. When the Courts are settled certain legal propositions, the order passed in violation of such propositions, it is to be construed that the Authorities lacks jurisdiction and thus, the writ petitions are entertainable.

5. The learned counsel for the petitioner reiterated that when the respondents have violated the rules in force, the petitioner need not prefer an appeal, as it goes to the root of the matter. However, the matter may be remanded back for fresh adjudication to the Original Authority. In this regard, the learned counsel reiterated that there are several such judgments remanding the matter back to the Original Authority. The controversy raised is that whether the report of the Enforcement Wing Officials may be accepted directly by the Competent Authority. It is contended that the Assessing Officer has to consider the facts and circumstances as well as the documents along with the discrepancies, if any, noted down by the Enforcement Authorities and take a decision on merits and in accordance with law. However, in the present case, decisions are taken merely based on the Enforcement Wing Official's Report, which is not inconsonance with the provisions of the Act.

6. This Court is of the considered opinion that the appeal provisions contemplated under the Act, at no circumstances needs to be undermined by the higher Courts. The very purpose and object as well as the legislative intention is to provide an opportunity to the aggrieved persons as well as the Department to vindicate their grievances for effective adjudication. The Appellate Authority is the final fact finding Authority and certain documents in original, intricacies involved in sales transactions cannot be gone into by the High Court in writ proceedings under Article 226 of the Constitution of India. In such circumstances, based on one ground, if the entire assessment order is quashed by the High Court, then this Court is afraid that there is a possibility of unjust loss to the Revenue, which is also to be taken into account. Adjudication of mixed question of law and facts are also of paramount importance and it is not as if one ground stands in favour of the petitioner and other grounds are relatable to the facts and circumstances. Thus, cases wherein mixed question of fact and law are involved, then preferring an appeal must be the remedy and High Court need not interfere at the initial stage.

7. Large number of writ petitions are filed raising point of jurisdiction. The point of jurisdiction is to be considered in two ways. Jurisdiction coupled with facts and circumstances has to be adjudicated by the Appellate Authority, based on the original documents and evidences. The authority, who issued the order impugned, if incompetent under the provisions of the Act, then the High Court may set aside the order and remand the matter back to the Authority Competent for taking decision on merits. The concept of remand is also to be exercised cautiously and in a restricted manner, so as to ensure that the Original Authority is not unnecessarily directed to re-adjudicate the issues, which were already adjudicated by such authority. Thus, remanding of a matter may be necessary in certain cases, where there was no adjudication of issues or the order impugned is cryptic. Once the orders are passed considering the issues and findings are given which would be sufficient for preferring an appeal and mere omission or commission of certain facts or non-consideration of certain grounds may not be a ground for remanding the matter back to the Original Authority. In the event of such remand, the finality to be reached is not only prolonged but protracted.

8. Recently, the writ petitions are directly filed against the orders in original with an idea to avoid pre-deposits to be made under the provisions of the Statutes or Rules. Such a ground shall not be considered by the Courts, as the legislative intention in this regard need not be diluted and the pre-deposits are prescribed with an intention to ensure that the appeals are filed in a genuine manner and to redress the

grievances. This exactly is the reason why, parties are tempted to file writ petition after writ petition, raising one or the other ground during the pendency of various proceedings, which would not only cause inconvenience but also prejudice the continuous of the proceedings to be concluded by following the provisions of the Act and Rules. Thus, such a practise cannot be encouraged by the High Courts.

9. In the event of adjudication of disputed facts by the High Court merely based on the affidavits or the selected xerox copies of the documents filed by the petitioners, this Court is afraid that there is a possibility of omission, commission and errors in appreciating certain facts and circumstances. Such an exercise needs to be avoided to the High Court in the interest of justice. Parties must be allowed to avail the valuable remedy of appeal for complete adjudication with reference to the original documents and evidences. The Appellate Authority, being the final fact finding authority, the findings therein would be of greater assistance to the High Court for the purpose of exercise of the power of judicial review conferred under Article 226 of the Constitution of India.

10. The Appellate Authorities are exercising the quasi judicial power. Thus they are empowered to adjudicate the point of law raised as well as the facts in entirety and they are empowered to take evidence, record statements etc. Thus, the importance of the appellate remedy is to be understood with reference to the legislative intention. Further the aggrieved person need not be deprived of his valuable opportunity of appeal contemplated under the Statute. In the event of entertaining a writ petition and keeping it pending for long years, the aggrieved person is also prejudiced and his opportunity of statutory remedy is denied unnecessarily.

11. In the present case, the appellate remedy is provided as under in the Act:

> Section 52 contemplates Appeal to Appellate Joint Commissioner. Section 52 (3) enumerates “in disposing of an appeal, the Appellate Deputy Commissioner may, after giving the appellant a reasonable opportunity of being heard, and for the sufficient reasons to be recorded in writing -
>
> (a) in the case of an order of assessment -
>
> (i) confirm, reduce, enhance or annul the assessment or the penalty or both;
>
> (ii) set aside the assessment and direct the Assistant Commissioner (Assessment) to make a fresh assessment after such further inquiry as may be directed; or

(iii) pass such other orders as he may think fit; or

b) in the case of any other order, confirm, cancel or vary such order.

12. The scope of the powers conferred on the Appellate Joint Commissioner, needs to be considered by this Court so as to understand the importance of exhausting the appellate remedy by the aggrieved persons. Section 52 contemplates, the appellate Authority may confirm, reduce, enhance or annul the assessment or the penalty or both. The powers conferred would reveal that the Appellate Authority has got ample powers to confirm, reduce, enhance or annul the assessment.

13. Thereafter, the appeal is provided before the Tribunal. The Appellate Authority as well as the Appellate Tribunals are the expert bodies and they are competent to adjudicate the technical aspects of the tax law. Such an adjudication is not only relevance but important to settle the issues in a complete manner for the purpose of redressing the grievances of the assessee as well as the revenue.

14. This being the principles to be followed, this Court has no hesitation in forming an opinion that the petitioner has to exhaust the appellate remedy contemplated under the Act. Accordingly, the petitioner is at liberty to approach the Appellate Authority by filing an appeal within a period of four weeks from the date of receipt of a copy of this order, in a prescribed format and by complying with the provisions of the Act and Rules. In the event of receiving any such appeal from the petitioner, the Appellate Authority shall consider the appeal on merits and entertain the same by condoning the delay in filing and in accordance with law and by affording opportunity to the writ petitioner as contemplated under the Provisions of the Act and dispose of the same as expeditiously as possible.

15. Accordingly, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Pns

To

The Deputy Commissioner (CT) - II
Large Taxpayers Unit,
Chennai - 600 008.

+1cc to Mr.N.Inbarajan, Advocate Sr No.34413
+1cc to Special Government Pleader Sr No.34693

W.P.Nos.17601 to 17606 of 2014
and
W.M.P.Nos.2, 2, 2, 2, 2 & 2 of 2014

GSM (CO)
PR (31/08/2021)