IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2022

CORAM :

THE HONOURABLE MR. JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.A. Nos. 521, 523, 526 & 529 of 2022
and
C.M.P. Nos. 3807, 3813, 3828, 3829, 3868, 3869 & 3879 of 2022

Tvl.Rajalakshmi Oils,
Represented by its Proprietor,
Tmt.M.Rajalakshmi,
No.29-A,
Alagappa Layout,
Venkatesa Colony,
Pollachi – 642 001.

.. Appellant in all cases /
Petitioner in all WPs

Versus

The Commercial Tax Officer,
Pollachi (West) Assessment Circle,
Pollachi.

.. Respondent in all cases /
Respondent in all WPs

Common Prayer: Writ Appeals filed under Clause 15 of Letters Patent against the order dated 22.11.2021 passed by the learned Judge in W.P.Nos.24807, 24809, 24810 & 24805 of 2021 respectively.

Prayer in WP No.24807 of 2021:Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records on the files of the respondent in TIN - 33112240440 / 2009-10 dated 8.9.2021 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice

Prayer in WP No.24809 of 2021:Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records on the files of the respondent in TIN -

33112240440 / 2010-11 dated 8.9.2021 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice

Prayer in WP No.24810 of 2021:Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records on the files of the respondent in TIN - 33112240440 / 2011-12 dated 8.9.2021 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice

Prayer in WP No.24805 of 2021:Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records on the files of the respondent in TIN - 33112240440 / 2008-09 dated 8.9.2021 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice

For Appellant : Mr.R.Senniappan in all WAs

For Respondent : Mr.M.Venkateshwaran
Special Government Pleader in all WAs

COMMON JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

Heard both sides and perused the documents enclosed in the typed set of papers.

2.The appellant is an assessee on the file of the respondent. Instead of resorting to alternative remedy available under the statute, they have made faint attempts invoking the writ jurisdiction under Article 226 of the constitution of India. The details of the earlier rounds of litigation are set out hereunder:

2.1. Originally, the appellant preferred W.P. Nos.300 to 303 of 2014, challenging the assessment orders relating to the years 2008-09, 2009-10, 2010-11 and 2011-12 passed by the respondent. By order dated 17.04.2014, the said writ petitions were allowed by setting aside the assessment orders and remitting the matter to the respondent for passing orders afresh, in accordance with law, after considering the objections filed by the appellant and affording an opportunity of personal hearing.

2.2. Subsequently, the appellant filed another writ petition viz., W.P.No.23785 of 2014. By order dated 03.09.2014, the said writ petition was allowed by setting aside the order dated 26.06.2014 and remitting the matter to the respondent for fresh consideration. In the said order, the respondent was directed to furnish a copy of the report dated 03.06.2013, within a period of one week and on receipt of the same, the appellant should file their objections to the proposal within a period of two weeks and thereafter, the respondent should give an opportunity of hearing to the appellant and pass orders afresh.

2.3. The appellant, once again, filed writ petitions in W.P.Nos.24805, 24807, 24809 & 24810 of 2021 seeking to quash the assessment orders dated 08.09.2021 passed by the respondent, pursuant to the directions of this Court in W.P. No. 23785 of 2014. It was contended on the side of the appellant that the respondent without furnishing a copy of the report dated 03.06.2013, passed the assessment orders dated 08.09.2021.

2.4. By a common order dated 22.11.2021, this Court, upon hearing both sides, dismissed the writ petitions, granting liberty to the appellant to workout the remedy before the Appellate Authority by filing appeals within a period of thirty days and on filing of such appeals along with pre-deposit of tax, the Appellate Authority should consider the same and pass appropriate orders, on merits and in accordance with law, within a period of four weeks. While doing so, the learned Judge has made the following observations:

> "12.Though the petitioner is correct in stating that the order dated 03.09.2014 in W.P.No.23785 of 2014 was not fully complied, it is noticed that the order passed by the respondent which is challenged in this writ petition was not based on the aforesaid report which was directed to be furnished. Therefore, the petitioner cannot challenge the impugned order passed by the respondent on merits.
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> 13.That apart, it is noticed that the petitioner was given ample opportunities to furnish reply and appear for the personal hearing. Instead the petitioner merely stated that the report has not been furnished and therefore file should be closed. Such closure of file cannot be allowed.
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> 14.The petitioner did not take advantage of the personal hearing afforded by the respondent. Therefore, the petitioner cannot challenge the impugned order stating that the impugned order is either a non-speaking order or was passed without

following the principles of natural justice. Further, what is evident is that the petitioner has scuttled the proceedings by filing frivolous writ petitions twice and this is the third attempt.

15.Considering the same, I do not find any merits in this writ petition and is liable to be dismissed and accordingly, this writ petition is dismissed."

Aggrieved over the aforesaid order, the appellant has come up with these appeals before this court.

3.The principal contention of the learned counsel for the appellant is that despite the order of this court in WP.No.23785 of 2014, the respondent did not furnish a copy of the report dated 03.06.2013, which was referred to in the notice dated 17.09.2021 to the appellant, but proceeded to complete the assessment and passed the orders dated 08.09.2021. The learned Judge also, without properly appreciating the said fact, dismissed the writ petitions filed by the appellant and directed them to avail the alternate remedy by filing statutory appeals before the appellate authority. However, the learned counsel fairly conceded that the copy of the report dated 03.06.2013 along with notice dated 17.09.2021 was served on the appellant, after the service of the order dated 08.09.2021, which is impugned in the writ petitions. Therefore, the learned counsel prayed to allow these writ appeals by setting aside the orders impugned herein as well as in the writ petitions, thereby granting one more opportunity to the appellant to substantiate its case with the relevant documentary evidence before the assessing officer.

4.On the other hand, the learned Special Government Pleader appearing for the respondent submitted that the report referred to in the notice has no relevance to the assessment order passed by the respondent and the appellant did not participate in the personal hearing provided to them. After taking note of the same, the learned Judge has rightly dismissed the writ petitions, which does not call for any interference by this court.

5.We are not inclined to interfere with the order passed by the learned Judge, in view of the fact that the copy of the report as sought by the appellant was not the basis for passing the assessment orders dated 08.09.2021 relating to the years 2008-09, 2009-10, 2010-11 and 2011-12 by the respondent, according to the respondent. Further, the grievance of the appellant has now been redressed, after serving a copy of the report along with the assessment orders dated 08.09.2021.

6.Therefore, having regard to the availability of efficacious alternative appeal remedy to the appellant and they are in possession of all the required documents, we permit the appellant to file appeal raising all the grounds available to them, along with pre-deposit of tax at 25%, before the Appellate Authority within a period of six weeks from the date of receipt of a copy of this judgment. On receipt of the same, the Appellate Authority shall entertain the same without raising any issue relating to limitation aspect, consider and pass appropriate orders, within a period of three months thereafter. It is made clear that this court has not expressed any opinion on the merits of the case and it is for the appellate authority to decide the appeal, on merits and as per law, after providing due opportunity of being heard to the appellant. If the appellant fails to file statutory appeal within the time granted herein, it is for the assessing authority to recover the tax dues in accordance with law.

7.All these writ appeals are disposed of in the above terms. No costs. Consequently, connected civil miscellaneous petitions are closed. The Registry is directed to return the original assessment order, if not returned earlier, to the learned counsel for the appellant, after substituting a xerox copy of the same.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

dhk/av
To
1. The Commercial Tax Officer
Pollachi (West) Assessment Circle
Pollachi.

2. The Section Officer,
ER Section, High Court, Madras - 104.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.18441
+1cc to the Government Pleader(Taxes), S.R.No.18299

W.A. Nos. 521, 523,
526 & 529 of 2022

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NSK 08/04/2022