



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2022

CORAM

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

Writ Appeal No.340 of 2022
and
C.M.P. No. 2721 of 2022

Bava Erectors
No.W-20/D,Italian Avenue, Block-27
Neyveli-03
Represented by its Managing Partner,
Mr.Shahul Hameed

.. Appellant / Petitioner

Versus

The Commercial Tax Officer,
Cuddalore Taluk Assessment Circle
Manjakuppam, Cuddalore.

.. Respondent / Respondent

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order made in W.P. No. 25393 of 2021 dated 30.11.2021.

Prayer in W.P. No. 25393 of 2021:- Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari, calling for the records of the impugned Assessment order bearing Ref.No.TIN.33174403992/2013-2014 dated 09.08.2021 and quash the same.

For Appellant	:	Mr. Adithya Reddy
For Respondent	:	Mr. V. Prashanth Kiran Government Advocate (Taxes)

JUDGMENT

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

The appellant has come forward with this intra-court appeal questioning the validity and correctness of the order dated



30.11.2021 passed by the learned Judge dismissing the writ petition No. 25393 of 2021 filed by them with liberty to work out their remedy before the Appellate Authority by filing an appeal.

2. The appellant company is a registered dealer under the erstwhile Tamil Nadu Value Added Tax Act, 2006 and engaged in the business of man power supply by entering into labour contracts with Neyveli Lignite Corporation and its associated enterprises. According to the appellant, they have duly filed the monthly returns in Form-I for the years 2013-14 and 2014-15. While so, their business premises was inspected by the Enforcement Wing of the Commercial Taxes Department on 20.10.2015 and 30.09.2016 and found certain discrepancies. According to the appellant, such discrepancies noticed by the enforcement wing officials are nothing but inadvertent errors committed by the appellant while maintaining the books of accounts. However, the Assessing Officer determined the difference in the deemed sale value for the year 2013-14 a sum of Rs.50,05,625 and for the year 2014-15 a sum of Rs.39,62,905/-, based on which demand for payment of tax of Rs.5,82,810/- and Rs.2,35,793/- respectively was raised. Aggrieved by the same, the appellant filed a revised return and duly paid the tax as demanded. However, on 06.10.2017 a show cause notice was issued, proposing to demand tax on the ground of alleged purchase suppression as per the details available in the departmental website for the years 2013-14 and 2014-15. The appellant replied to the said notice on 10.11.2017 and thereafter, no further action has been taken till 13.07.2021. While so, after lapse of more than three years, another show cause notice dated 13.07.2021 was issued on the same ground and thereafter, the assessment orders were passed on 09.08.2021.

3. It is the further case of the appellant that there was mismatch between details furnished by them and the details available in the departmental website. But the assessing officer, without conducting any enquiry, passed the orders of assessment on 09.08.2021. Therefore, challenging the assessment orders dated 09.08.2021, the appellant filed W.P. Nos. 25393 and 25394 of 2021 before this Court. However, the learned Judge, without adverting to the merits of the averments raised by the appellant in the affidavit filed in support of the writ petitions, dismissed the writ petitions on 30.11.2021 by granting liberty to the appellant to workout their remedy before the Appellate Commissioner by way of an appeal within a period of thirty days and directed the Appellate Commissioner to dispose of the same within a period of three months thereafter. As against the order dated 30.11.2021 passed in WP No. 25393 of 2021, the appellant is before this court with this writ appeal.

4. It is the contention of the learned counsel for the appellant that the assessment orders suffer from patent



illegality and they were passed without jurisdiction. When the jurisdiction of the respondent was questioned, the learned Judge ought to have considered the writ petition on merits, but without doing so, dismissed the same on the sole ground that the appellant has not submitted their reply to the second show cause notice. He would further submit that in the case of M/s. WABCO India Limited vs The Deputy Commissioner of Income Tax in W.A.No.884 of 2018 this Court has held as follows;

....where the jurisdiction of the respondent to issue the impugned show cause notice was under challenge, in our considered view, the writ petition ought not to have been dismissed on the ground that the appellant had a right to reply to the show cause notice. The learned Single Bench ought to have examined whether the show cause notice was in excess of jurisdiction, by examination of jurisdictional facts, which led to issuance of show cause notice'

5. It is his further contention that when the second show cause notice dated 13.07.2021 was issued, COVID 19 lockdown was in force in the State of Tamil Nadu. The lockdown imposed by the State restricted the number of working staff in the appellant firm for various activities, including their business activity, thus, the functioning of appellant's office was disrupted. While so, the appellant could not submit their reply to the second show cause notice dated 13.7.2021 within the stipulated time. The reply submitted by the appellant on 10.11.2017 to the first show cause notice dated 06.10.2017 was simply kept in abeyance till 13.7.2021 by the respondent and after nearly four years, the respondent revived the assessment proceedings without stating any reason for such delay and passed the assessment orders without considering the replies already filed by the appellant. Hence the finding of the learned Judge that the writ petition is not maintainable as the appellant neither filed any representation nor appeared before the respondent is erroneous. Therefore the learned counsel for the appellant prayed for setting aside the order of the learned Single Judge and prayed to allow this appeal.

6. On the other hand, the learned Government Advocate would contend that the dispute raised by the appellant relates to improper computation and/or determination of tax notwithstanding their plea that there were certain inadvertent errors crept in the books of accounts maintained by them. If it is so, this Court cannot go into those disputed questions and therefore, the learned Judge is right in dismissing the writ petition filed by the appellant, granting liberty to file a statutory appeal before the appellate authority.



7. The learned Government Advocate appearing for the respondent would further submit that the assessment order dated 09.08.2021 states that an opportunity of personal hearing was given to the appellant by issuing notice dated 13.07.2021 fixing the date of personal hearing as 19.07.2021, however, the appellant did not participate in the personal hearing, which shows that the appellant has no interest in availing the opportunity of personal hearing. Apart from that, there was no explanation given by the appellant as to why they did not choose to file the writ petition on an earlier occasion when the first show cause notice was issued on 06.10.2017. In any event, taking note of the above facts, the learned Judge has rightly dismissed the writ petition granting liberty to the appellant to workout their remedy before the Appellate Commissioner. The learned Government Advocate therefore prays for dismissal of this writ appeal.

8. Heard the learned counsel appearing on either side and perused the materials placed before this Court. It is seen from the records that before passing the order of assessment dated 09.08.2021, a second show cause notice dated 13.07.2021 was issued fixing the date for personal hearing as 19.07.2021. Even though the appellant cites several reason for non appearance, they failed to seek an adjournment on the date fixed for hearing and sought for an opportunity of hearing on another date. As the appellant did not avail the opportunity of hearing granted to them, the assessing authority has passed the order of assessment. The learned Judge, taking note of the above facts, has rightly directed the appellant to assail the order of the assessing officer by filing an appeal to the appellate authority. We find no reason to interfere with such a direction issued by the learned Judge. However, we hereby grant four more weeks time for the appellant to file a statutory appeal before the Appellate Authority. If any such appeal is filed, the same shall be considered by the Appellate Authority on merits and in accordance with law and appropriate orders be passed within a period of three months thereafter.

9. With the above observations, this writ appeal is dismissed. No costs. Consequently, connected C.M.P.No.2721 of 2022 is closed.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar



msr/rsh

To

The Commercial Tax Officer,
Cuddalore Taluk Assessment Circle
Manjakuppam, Cuddalore.

+1cc to Mr. Adithya Reddy, Advocate, S.R.No.12162
+1cc to the Government Pleader, S.R.No.12494

WA No. 340 of 2022

GPL[co]
NSK 18/03/2022