IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition Nos. 2682, 2684, 2687 and 2688 of 2022
and
WMP.No.2847, 2850, 2854 and 2857 of 2022

M/s. Arun Vyapar Udyog Limited,
Represented by its General Manager,
Mr.K.Venkataraman,
No.101-A, Ellaya Mudali Street,
Tondiarpet, Chennai.
Now at 5th Floor, Chokhani Tower,
No.29/6 (16/6) Whites Road,
Royapettah, Chennai – 600 014. ...Petitioner in all W.Ps.

Vs

The State Tax Officer
Tondiarpet Assessment Circle,
No.32, Elephant Gate,
Police Station Bridge Road,
Vepery, Chennai – 600 003. ...Respondent in all W.Ps.

Writ Petitions under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records on the files of the respondent herein in his proceedings in TNGST/1200643/2000-2001, TNGST/1200643/2001-2002, TNGST/1200643/2002-2003 and TNGST/1200643/2003-2004 respectively dated 22.11.2021 and quash the same.

For Petitioner : Mr.N.Prasad

For Respondent : Mr.Richardson Wilson
Additional Government Pleader

COMMON ORDER

The prayer sought for in these writ petitions is for a writ of certiorari, calling for the records on the files of the respondent herein in his proceedings dated 22.11.2021 in TNGST/1200643/2000-2001, TNGST/1200643/2001-2002, TNGST/1200643/2002-2003 and TNGST/1200643/2003-2004 and quash the same.

2. In these writ petitions, the order of assessment dated 22.11.2021 made by the respondent against the petitioner/assessee for the Assessment Years 2000-2001, 2001-2002, 2002-2003 and 2003-2004 are under challenge respectively.

3. The short facts, which are required to be noticed for the disposal of these writ petitions are as follows:

(i) The petitioner is a private limited company incorporated under the Companies Act, which had its factory at 15, SIPCOT Industrial Estate, Gummidipondi, - 601 201, Thiruvallur District. The petitioner has involved in the activity of manufacture of TMT bars. The petitioner was an assessee on the files of the respondent herein under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (In short, "TNGST Act, 1959") and under the provisions of the Central Sales Tax Act, 1956 (In short, "CST Act, 1956").

(ii) The respondent subjected the petitioner to the assessment under the TNGST Act, 1959 for the Assessment Years 2000-2001, 2001-2002, 2002-2003 and 2003-2004. In respect of the Assessment Year 2000-2001 there was an original assessment dated 14.06.2002. There was a revision of assessment for the year 2000-2001 dated 31.12.2012 and for the Assessment Years 2001-2002 and 2002-2003, the assessments were completed on 31.12.2012 disallowing the second sale exemption.

(iii) In respect of four of the vendors of the petitioner that second sale was disallowed in respect of the petitioner's assessment and the reason according to the petitioner from the point of Revenue is that the deposition of the four vendors of the petitioner were relied upon by the Revenue and accordingly they have come to the conclusion that the said claim of the petitioner in respect of those four vendors for the respective Assessment Years were disallowed.

4. With regard to the said assessments, already the petitioner approached this Court. In the first round of litigation, where there was a point, among other things that, the respondent Revenue should have afforded an opportunity to the petitioner for cross-examination of the witnesses with the sellers of the petitioner, who were relied upon by the Revenue.

5. After having considered the said plea raised by the petitioner's side, a learned Judge of this Court by common order dated 02.03.2020, passed an order disposing all those four writ petitions, where the learned Judge has given the following directions:

> "6. Taking note of the submissions made on either side, the impugned orders are set aside and the matter is remanded back to the respondent for fresh consideration. The

> respondent is directed to furnish copies of the statements of witnesses, viz. the sellers of the petitioner and also the documents like cancellation of R.C., to the petitioner, within a period of two weeks from the date of receipt of a copy of this order, for which objections shall be filed by the petitioner within a period of two weeks therefrom. Thereafter, the Department shall pass appropriate orders on merits and in accordance with law, within a period of two weeks from the date of receipt of objections."

6. Pursuant to the said order passed by this Court remanding the matter back to the respondent with certain directions, according to Mr.N.Prasad, learned counsel appearing for the petitioner, the respondent Revenue should have furnished the copies of the statement of the witnesses with the sellers of the petitioner and also the documents like cancellation of R.C etc., to the petitioner within a time frame and thereafter, an opportunity should have been given to the petitioner to cross-examine those witnesses, who had given statement, which was relied upon by the Revenue. However the Revenue has chosen to give only the copies of the documents relied by them, but there was no chance of cross-examination given, therefore according to the learned counsel for the petitioner it is a clear violation of principles of natural justice and also the import of the order passed by this Court referred to above dated 02.03.2020.

7. That apart, the learned counsel for the petitioner would also canvass the point that, based on the materials, which the Revenue collected or claimed to have been collected discreetly, assessment has been made and accordingly there was a high stake demand made against the petitioners in each of the Assessment Years. Further, stating the said reason, the learned counsel would contend that, in respect of Assessment Year 2000-2001, a sum of Rs.1,53,10,576/-, for Assessment Year 2001-2002 a sum of Rs.1,64,74,168/-, for Assessment Year 2002-2003 a sum of Rs.59,61,201/- and for Assessment Year 2003-2004 a sum of Rs.1,40,31,796/- have been demanded as a difference of tax or disputed tax and consequential penalty etc., have also been made in the order of assessment dated 22.11.2021, which are impugned herein.

8. Therefore, the learned counsel appearing for the petitioner would also canvass the point that, if the ultimate assessment has been made, where a huge demand by way of difference of tax is demanded by the Revenue, which is not based on or proportionate to the evidence said to have been collected by the Revenue, even then, those cases can be agitated as a

violation of the principles of natural justice, as there has been no fair assessment made and on that ground also, apart from non giving of opportunity of cross examination, the petitioner can approach this Court by filing writ petition under Article 226 of the Constitution of India against the impugned orders of assessment.

9. Hence the learned counsel appearing for the petitioner seeks indulgence of this Court against the orders of assessment impugned herein and after having set aside the same, either it could be remanded back to the respondent for reconsideration or before which, the records could be called for, for further verification as to whether the amount now demanded is based on proportionate to documents relied upon by the Revenue side.

10. On the other hand, Mr.Richardson Wilson, learned Additional Government Pleader appearing for the respondent/Revenue would contend that, as against the earlier orders of assessment during the first round of litigation, the grievance expoused by the petitioner side was that, the documents relied upon by the Revenue were not supplied to them. Having considered the said plea raised by the petitioner side, the learned Judge while passing the order in the earlier writ petition dated 02.03.2020 had given a direction to the Revenue to furnish the copies of the statement of witnesses of the sellers of the petitioner and also the documents like cancellation of R.C to the petitioner within a period of two weeks and those documents in fact were served on the petitioner. Thereafter, reply was sought for, which were also given by the petitioner, and the reply point-wise was considered by the Assessing Authority and this has been in fact reflected in the very order impugned itself at para 29, based on which, the revenue has to come to the conclusion, as to the difference of tax in respect of each of the Assessment Years. Such difference of tax was ultimately found out and demanded through the assessment orders including the penalty.

11. As against these orders, if at all the petitioner is aggrieved, he can very well prefer an appeal before the Appellate Authority and only in order to avoid the making of pre-deposit of 25% of the demand before the Appellate Authority, as a pre-requisite to entertain, the extraordinary jurisdiction of this Court is invoked by the petitioner, for which according to the learned Additional Government Pleader, the petitioner does not have any plausible reason.

12. If at all there is any violation of principles of natural justice and if it is proved before this Court to the satisfaction, then only the extraordinary jurisdiction can be invoked and in respect of all other cases, if it is only factual

matrix, which is to be gone into by the Appellate Authority on merits of the case. For the said exercise, the powers of this Court under Article 226 cannot be expected to be exercised and therefore the learned Additional Government Pleader would contend that these writ petitions are deserved to be rejected.

13. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

14. In the first round of litigation, the grievance of the petitioner was on two folds, one is that, non furnishing of the copies or statement of the witnesses etc., and another ground is that in respect of those statement given by the witnesses, that is vendors of the petitioner, the chance of cross-examination should have been given.

15. The learned judge, who considered the said two grounds raised by the petitioner in the said writ petition, by order dated 02.03.2020, has given a direction to the Revenue to furnish those documents within a time frame, which they collected, to the petitioner. Insofar as the cross examination plea raised by the petitioner is concerned, though it was the plea of the petitioner which has been recorded in para 4 of the said judgement of the learned Judge, there was no direction to that effect by the learned Judge directing the Revenue to give cross examination chance to the petitioner to cross examine the witnesses / vendors, who claimed to have given statement to the Revenue, which they relied upon.

16. Therefore the said plea cannot be raised once again by the petitioner before this Court in this writ petition that they had not been given a chance of cross examination.

17. Moreover, these cases pertain to the Assessment Years 2000-2001, 2001-2002, 2002-2003 and 2003-2004, after this much of long time, it may not be possible to bring the persons who gave the statement for the purpose of cross examination. Be that as it may, such a direction even was not given by the learned Judge while passing order sometime in March 2020.

18. Insofar as the other ground raised by the petitioner that, the demand now made or the tax which has been assessed by the respondent through the impugned order is disproportionate to the documents or evidences said to have been collected by the Revenue and if at all the tax liability was there on the part of the petitioner during the relevant Assessment Years that could be very minimal is concerned, it is to be noted that, in fact it is purely a factual matrix, which can be gone into by the Appellate Authority.

19. The further contention of the learned counsel for the petitioner in this regard is that, based on such a huge demand, if the petitioner is driven to approach the Appellate Authority for preferring an appeal by making the pre-deposit of 25% of the demand, that itself would be a great injustice to the petitioner, therefore merely because a huge amount has been shown in the assessment order that cannot be mechanically taken for requiring the petitioner to deposit 25% as pre-deposit for preferring appeal and therefore on that ground also, the learned counsel seeks indulgence of this Court.

20. However herein the case in hand, whether the difference of tax in respect of each Assessment Year as quantified by the Assessing Authority is proportionate or disproportionate to the available records or documents relied upon by the Revenue is again a matter of facts, which should be gone into only by the Appellate Authority and not by this Court. If at all there is any violation of the principles of natural justice or for want of jurisdiction and if there is any statutory violation in the assessment process, then only this court normally would exercise its jurisdiction under Article 226. Otherwise in respect of all other aspects, the Assessee has only to approach the Appellate Authority, as all other aspects necessarily to be gone into, being factual matrix or dispute, only by the Appellate Authority.

21. Herein the case in hand, the plea now raised by the petitioner counsel that the cross-examination chance was not given and the quantification of the difference of tax is disproportionate, for which, there is no basis or documents collected or claimed to have been collected by the Revenue is concerned, the first point that is cross-examination issue, as has already been discussed, it has not even been given in the first round of order by the learned judge, therefore that cannot stand in favour of the petitioner. In respect of the second ground, as rightly pointed by the learned Additional Government Pleader, it is again falls under the category of factual matrix, which is to be gone into by the appellate authority.

22. However, one difficulty was expressed by the learned counsel for the petitioner that, even if the appeal is filed, it would take some longer time, till such time, the petitioner has to undergo all procedural aspects as these are all the matters pertains to the Assessment Year 2000 to 2001 on wards, therefore after such long years, if the appeals go for longer period, it would be detrimental to the interest of the petitioner and also he submits that during the long pendency of the appeal there is likelihood of some orders to be passed by the Appellate Authority to deposit further more amount apart from the conditional pre-deposit of 25% and also there may be a demand by way of order of Appellate Authority to the assessee to give

Bank Guarantee for further sum and if those orders are passed, that will be further detrimental to the interest of the petitioner.

23. The said difficulty expressed by the petitioner can be redressed by this Court, but at the same time, the making of pre-deposit of 25% being a condition prescribed to entertain the appeal has to be accepted and the petitioner has to file the appeal, if he is advised to do so, only after complying the pre-deposit condition.

24. In that view of the matter as discussed above, this Court is inclined to dispose of these writ petitions with the following orders:

- This Court at this stage under Article 226 of the Constitution of India, is not inclined to entertain these writ petitions against the impugned orders of assessment, because against the impugned orders of assessment dated 22.11.2021, there is a clear alternative appellate remedy available for the petitioner.
- Accordingly the petitioner is relegated to approach the Appellate Authority by filing an appeal within a period of 4 weeks from the date of receipt of a copy of this order. It is made clear that, while filing such an appeal, the petitioner shall comply with the pre-deposits condition of 25% of the demanded amount of tax in each case.
- It is further made clear that, if once such pre-deposit condition is complied with by the petitioner, the appeal shall be entertained, if it is otherwise in order and the said appeals shall be heard and disposed of on merits within a period of 3 months from the date of entertainment.
- It is further made clear that during the pendency of the appeal, no further order burdening the petitioner to make further deposit beyond the 25% of pre-deposit or to make the petitioner to give any Bank Guarantee for the remaining demand, shall be made. It is further made clear that, since the time bound order has been passed, fixing the outer time limit to the Appellate Authority to decide the appeal, the utmost co-operation shall be given by the petitioner enabling the Appellate Authority to decide the appeal within the frame indicated above.
- It is also made clear that, if the petitioner failed to file an appeal as indicated above by making the pre-deposit, it is needless to mention that the respondent Revenue would be free to initiate further proceedings in accordance with law.

25. With the above observations and directions, these writ petitions are disposed of. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mp/nti

To

The State Tax Officer
Tondiarpet Assessment Circle,
No.32, Elephant Gate,
Police Station Bridge Road,
Vepery, Chennai - 600 003.

+4ccs to Mr.N.Prasad, Advocate, S.R.No.9377

+1cc to the Special Government Pleader (Taxes), S.R.No.10016

Writ Petition Nos. 2682, 2684,
2687 and 2688 of 2022

PA(CO)
RVM(25/03/2022)