IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2022

CORAM :

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

W.A. Nos. 999, 1004, 1011 & 1012 of 2022
and
C.M.P.Nos.6352, 6386, 6443 & 6438 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 .. Appellant/Petitioner in all cases

Versus

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

Common Prayer: Writ Appeals filed under Clause 15 of Letters Patent against the common order dated 14.02.2022 passed by the learned Judge in W.P. Nos. 2682, 2684, 2687 and 2688 of 2022.

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 Appellant : Mr.N.Prasad (in all cases)
For Respondent : Mr.M.Venkateswaran (in all cases)
Special Government Pleader

COMMON JUDGMENT

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

According to the appellant / assessee, they are involved in the activity of manufacture of TMT Bars and are registered dealer on the files of the respondent under the provision of the Tamil Nadu General Sales Tax Act, 1959 and the Central Sales Tax Act, 1956. For the assessment year 2000-2001, the original assessment was revised by passing revisional assessment order dated 31.12.2012. In respect of the assessment years 2001-2002, 2002-2003 and 2003-2004, the assessments were completed by orders dated 31.12.2012, thereby disallowing the claim of the appellant relating to second sale exemption. All the orders passed by the respondent relating to the assessment years in question were put to challenge by the appellant by filing WP.Nos.3149 to 3152 of 2013, which were disposed of by order dated 02.03.2020, by setting aside the same and remanding the matter for fresh orders. Pursuant to the said order, upon issuing notices to the appellant, the fresh assessment orders were passed on 22.11.2021, relating to the assessment years in question. The said orders were challenged by the appellant in WP.Nos.2682, 2684, 2687 and 2688 of 2022, which were disposed of by a common order dated 14.02.2022, by directing the appellant to avail the appeal remedy, after complying with the mandatory pre-deposit of 25% of the disputed tax, within a period of four weeks. On such filing, the appellate authority should dispose of the same, within a period of three months. Aggrieved over the same, the appellant is before this court with these intra-court appeals to quash the said order of the learned Judge.

2.It is the contention of the learned counsel for the appellant that in the earlier round of litigation, in WP.Nos.3149 to 3152 of 2013, the learned Judge set aside the assessment orders pertaining to the assessment years in question, and remanded the matter to the respondent / assessing officer for fresh consideration, for want of compliance of the principles of natural justice. Even thereafter, without providing an opportunity to the appellant for cross examination of the witnesses, whose statements were sought to be relied upon by the respondent, the assessment orders came to be passed on 22.11.2021, by observing that there is no necessity for a right of cross examination, because the third party deposition does not even pertain to the appellant. When the same was brought to the knowledge of the learned Judge in the second round of litigation, viz., the present writ petitions, the same was not considered and the appellant was directed to approach the appellate authority by way of statutory appeals. Thus, according to the learned counsel, such a course adopted by the learned Judge is arbitrary, illegal and erroneous to law.

3.However, the learned counsel for the appellant ultimately restricted the relief sought herein and submitted that the appellant / assessee is under financial distress in the teeth of increase of raw material price, etc. and hence, they are unable to make the mandatory pre-deposit of 25% each, for filing statutory appeals. Therefore, with regard to assessment years 2000-01 and 2001-2002, the appellant may be directed to deposit 12.5% as contemplated prior to the amendment made by Section 2 of the Fifth Amendment Act (19 of 2002) i.e., with effect from 03.06.2002 and with respect to other assessment years viz., 2002-2003 and 2003-2004, the appellant may be directed to deposit 25%, as per the amendment made by Section 2 of the Fifth Amendment Act (19 of 2002) with effect from 03.06.2002, as mandatory pre-condition for preferring statutory appeals before the appellate authority.

4.The learned Special Government Pleader appearing for the respondent has no objection for granting such relief to the appellant.

5.Considering the facts and circumstances of the case and having regard to the limited relief now sought by the learned counsel for the appellant, which has not been seriously opposed on the side of the respondent and also in the light of the legal provision relating to pre-deposit for filing the statutory appeals, this Court directs the appellant to make pre-deposit of 12.5% each, with respect to the assessment years 2000-2001 and 2001-2002 and 25% each, with respect to the assessment years 2002-2003 and 2003-2004, as per the amendment made in Section 2 of the Fifth Amendment Act (19 of 2002) with effect from 03.06.2002, for filing the statutory appeals before the appellate authority. Such an exercise shall be completed by the appellant, within a period of eight weeks from the date of receipt of a copy of this judgment. On filing of such appeals along with the pre-deposits, the appellate authority shall entertain the same, without raising any issue relating to limitation, decide and pass orders, on merits and in accordance with law, after affording an opportunity of personal hearing to the appellant, within a period of six (6) months thereafter. Registry is directed to return the original orders, if any, to the learned counsel for the appellant forthwith, after substituting xerox copy of the same.

6.Accordingly, all the intra court appeals stand disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

dhk

To

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

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

+1cc to Mr.N.Prasad, Advocate SR.No.27904
+1cc to the Special Government Pleader (Taxes), SR.No.28427

W.A. Nos. 999, 1004,
1011 & 1012 of 2022

SSN(CO)
GN(10/06/2022)