IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.10123 of 2022
and W.M.P.Nos.9813 and 9814 of 2022

M/s. Tamil Nadu State Marketing Corporation Ltd.,
4th Floor, CMDA Tower-II,
Gandhi Irwin Bridge Road,
Egmore, Chennai - 600 008.
Rep. by its Managing Director
Shri. Dr.L.Subramanian .... Petitioner

-Vs-

1. Additional / Joint / Deputy /
Asst Commissioner of Income Tax / Income Tax Officer,
National Faceless Assessment Centre,
Delhi.

2. The Deputy Commissioner of Income Tax
Corporate Circle-3(1)
121, Mahatma Gandhi Road,
Chennai - 600 034. .... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records of the petitioner on the file of the first respondent and quash the impugned Assessment Order in DIN : ITBA/AST/S/147/2021-22/1042162310(1), dated 30.03.2022 for the Assessment Year 2016-17 passed by the first respondent.

For Petitioner : Mr.R.Vijayaraghavan

for Mr.Subbaraya Aiyar Padmanabhan

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing counsel

ORDER

The prayer sought for herein is for a writ of certiorari, to call for the records of the petitioner on the file of the first respondent and quash the impugned Assessment Order in DIN : ITBA/AST/S/147/2021-22 / 1042162310(1), dated 30.03.2022 for the Assessment Year 2016-17 passed by the first respondent.

2. The petitioner is a State Marketing Corporation Ltd., under which Indian made foreign liquor are being sold through retail vending shop run throughout the State by the petitioner corporation.

3. In this regard, the petitioner's account was assessed by the respondents under the provisions of the Income Tax Act, 1961 (in short "the Act") and ultimately the final assessment also was over for the Assessment Year 2016-17.

4. However, subsequently, in order to reopen the same under Section 147

of the Act, the Revenue issued a notice under Section 148 of the Act. After receipt of the notice under Section 148, as per the ***GKN Driveshafts (India) Limited Vs. Income Tax Officer and others*** reported in ***(2003) 259 ITR 19 (SC),*** procedure held by the Hon'ble Supreme Court, the petitioner after filing the return has sought for the reasons for such reopening and the reasons were also furnished by the Revenue to the petitioner. Thereafter against the said reasons furnished by the Revenue objections were raised by the petitioner assessee.

5. In this context, it is the case of the petitioner that, even though objections have been raised by the petitioner, it has not been properly disposed or disposed in proper perspective, as the petitioner has paid huge amount by way of VAT to the State authorities, therefore, that amount has to be given exemption not to be added as an income.

6. In this context, Mr.R.Vijayaraghavan, learned counsel appearing for the petitioner assessee has brought to the notice of this Court about the earlier writ petition filed by the very same assessee before this Court in W.P.No.21995 of 2021, where also when a question was raised as to the maintainability of the writ petition filed therein in the similar circumstances in respect of other Assessment

Year, with regard to the maintainability, arguments were advanced on behalf of the assessee and that was considered by the Division Bench and ultimately by order, dated 21.03.2022, by considering the factual matrix as well as the legal position in this regard, including the law laid down by the Hon'ble Supreme Court in ***GKN Driveshafts (India) Limited Vs. Income Tax Officer and others*** reported in ***(2003) 259 ITR 19 (SC)***, the First Division Bench, by order, dated 21.03.2022, has come to the conclusion that the writ petition was not maintainable before this Court and therefore, the assessee was relegated in that writ petition to go before the Appellate Authority to file a regular quantum appeal.

7. But the only consolation that was given to the petitioner assessee in that writ petition in para 19 of the order, dated 21.03.2022 was that, the appeal can be filed by the assessee within three weeks period and in view of the peculiar facts and circumstances projected in that case, no coercive steps shall be taken against the petitioner assessee till the disposal of the appeal by the Appellate Authority.

8. Therefore, Mr.R.Vijayaraghavan, learned counsel appearing for the petitioner canvass the point that, if at all this Court comes to a conclusion that,

the present writ petition is not maintainable before this Court and this Court come forward to relegate the party to go before the Appellate Authority to file a regular quantum appeal, the said protection given in para 19 of the order, dated 21.03.2022 can also be given and extended to the present case also in respect of the assessee for the particular Assessment Year.

9. However, Mrs.Hema Muralikrishnan, learned Senior standing counsel appearing for the respondents would point out that, while granting the said relief of interim protection till the disposal of the appeal to be filed by the assessee in that case in para 19 of the order referred to above, in the last line, the following line has been stated "this order shall not be taken as a precedent, as it is passed after taking note of the peculiar facts of the present case only".

10. Citing the last three lines, learned Senior standing counsel would point out that, in view of the peculiar facts and circumstances, that was projected and considered by the First Division Bench in the said case, that relief was given to the petitioner assessee, therefore, the same relief, for which the petitioner is not entitled to in this case.

11. She would also submit that, if at all the petitioner wants to go before the Appellate Authority, if ultimately this Court consider that this writ petition is

not maintainable, it is open to him to go before the Appellate Authority within a time frame that may be stipulated by this Court. At the best only till he approaches the Appellate Authority, such an interim protection can be given, however that interim protection cannot be extended the moment he files appeal before the Appellate Authority, where it is open to the petitioner assessee to seek for any interim relief, according to the choice of the petitioner assessee and if such an interim relief is sought for, it is for the Appellate Authority to decide the same on merits, she contended.

12. She would also submit that, if at all any stay petition has to be submitted, that has to be submitted before the Assessment Authority under Section 220(6) of the Act, therefore, if that application is filed, after filing the appeal before the Appellate Authority, that can be very well directed to be taken into account and to be disposed of on merits under the said provisions of the Act. Therefore at this juncture no such interim protection till the disposal of the appeal to be filed by the petitioner can be granted to the petitioner assessee as has been granted in para 19 of the said order in said case of the same assessee.

13. I have considered the said submissions made by both sides and have perused the materials placed before this Court.

14. I have gone through the said Judgment of the First Division Bench of this Court, dated 21.03.2022 made in W.P.No.21995 of 2021.

15. The fact of the case is almost similar to that of the said case, therefore the learned counsel seeks the same relief.

16. But the one difference is that, where the First Bench also has very consciously stated that, the said order shall not be taken as a precedent because of the peculiar facts and circumstances, that relief was given to the petitioner till the disposal of the appeal.

17. Here in the case in hand, even though reasons have been given and objections have been made, that has been disposed of, however, whether it is properly disposed of or not based on the earlier Supreme Court orders and also on the facts of the case in view of the legal position, it is again a matter of merit to be gone into by the Appellate Authority. Therefore before whom, it is open to the petitioner to file an Appeal by way of regular quantum appeal.

18. However, for getting an interim order of stay of the impugned assessment order, till the disposal of the appeal is concerned, that cannot be

granted at this juncture by this Court, because it is for either the Assessing Authority or the Appellate Authority to take a call when such an application for stay is filed, after filing the appeal by assessee.

19. That is the reason why the legislature thought it fit to have a provision like 220(6) of the Act, under which an application for stay can be filed by the assessee by stating the reasons and with the discretion of the assessing authority, of course by imposing certain condition depending upon the facts and circumstances of the case, the stay petition can be disposed by the Assessing Authority, even as against that order to be passed by the Assessing Authority, appeal / Revision can further be filed.

20. Therefore the relief sought for by the petitioner cannot be granted in this writ petition, as this Court feels that the writ petition is not maintainable in this Court at this juncture, invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution.

21. Hence, the writ petition on the ground of maintainability is liable to be rejected. At the same time some interim protection, at least till the assessee

approach the Appellate Authority to file an appeal can be given with a further liberty to the petitioner to move stay petition either before the Assessing Authority or before the Appellate Authority as the case may be.

22. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders :

(i) That the writ petition is not maintainable as there has been an alternative efficacious appeal remedy available to the petitioner, which the petitioner has admittedly not exhausted.

(ii) Therefore the petitioner is relegated to go before the Appellate Authority, within a period of four weeks from the date of receipt of a copy of this order to file a regular quantum appeal.

(iii) After filing the appeal, it is open to the petitioner to file a petition for stay before the Assessing Authority under Section 220(6) of the Act.

(iv) If at all any interim relief is sought for by the petitioner before he approaches the Assessing Authority after filing the appeal, that kind of interim relief also can be asked for by the petitioner assessee before the Appellate Authority, and that can be taken up and decided as a preliminary issue before taking up the appeal on merits.

(v) The appeal also can be taken up and decided on merits as early as possible.

(vi) Therefore, till four weeks time from the date of receipt of a copy of this order, no coercive step shall be taken by the respondent Revenue, pursuant to the impugned order.

23. With these orders and direction, this writ petition is dismissed as not maintainable. No costs. Consequently, connected miscellaneous petitions are also dismissed.

26.04.2022

Index : Yes/No

Speaking order / Non-speaking order

tsvn

To

1. The Additional / Joint / Deputy /
   Asst Commissioner of Income Tax / Income Tax Officer,
   National Faceless Assessment Centre,
   Delhi.

2. The Deputy Commissioner of Income Tax
   Corporate Circle-3(1)
   121, Mahatma Gandhi Road,
   Chennai - 600 034.

R. SURESH KUMAR, J.

tsvn

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