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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2022

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

W.A.No.2946 of 2021
and
CMP. No.19997 of 2021

N.Parameswaran.
Proprietor, Advaith Consultancy,
Rep. by Power Agent Mr.P.Sivakumar,
No.36, Kalipalayam, Mulanur,
Dharapuram, Tirupur 638 106. ...Appellant/Petitioner

Versus

The State Tax Officer,
Tamil Nadu Value Added Tax,
Commercial Tax Office,
Jawalikadai Veedhi,
Dharapuram Assessment Circle,
Dharapuram 638 656. ...Respondent/Respondent

Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 23.09.2021 passed in W.P.No.20285 of 2021.

Prayer in W.P.No.20285 of 2021: Petition filed under Article 226 of the constitution of India praying to issuance of Writ of Certiorari to calling for the records on the file of the respondent in TIN.33563023419/2015-16 dated 19.07.2021 and consequently notice under Form O dated 19.07.2021 and Form RR dated 19.07.2021 quash the same.

For Appellant : Mr.G.Surya Narayanan

For Respondent : Mr.Richardson Wilson
Additional Government Advocate (Taxes)

JUDGMENT

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

Challenging the order dated 23.09.2021 passed by the learned Judge in WP.No.20285 of 2021, the writ petitioner / assessee has filed this writ appeal.

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2.By the order impugned herein, the learned Judge relegated the appellant/ writ petitioner to avail the alternate remedy of statutory appeal under section 51 of the TNVAT Act. The observation of the learned Judge is quoted below for ready reference:

> "18.From the narrative thus far and the grounds of attack qua impugned order, I am unable to persuade myself to believe that the captioned writ petition falls under any of the exceptions qua alternate remedy rule. Impugned order is assailed on points predicated on mixed blend of facts and law which at best qualify as grounds of appeal and fail to pass muster qua being persuasive enough for exercise of writ jurisdiction on the teeth of alternate remedy in fiscal law statutes. To be noted, the points raised in having assailing impugned order (notwithstanding very many averments in writ affidavit) have been captured and set out supra. As this is as clear as daylight, I deem it appropriate to not to dilate further on this, more so as the exceptions as culled out by Hon'ble Supreme Court have been reiterated and are reproduced supra. Therefore, this is a fit case to relegate the writ petitioner to the alternate remedy of statutory appeal under section 51 of TNVAT Act. If the writ petitioner chooses to file a statutory appeal under section 51 of TNVAT Act, the same will be dealt with on its own merits and in accordance with law by the Appellate Authority uninfluenced by anything contained in this order which may come across as having the trappings of an expression on merits of the matter.
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> 19.It is open to the writ petitioner to seek exclusion of time spent in the captioned writ petition inter alia by placing reliance on Section 14 of Limitation Act for the purpose of limitation qua statutory appeal, if the writ petitioner chooses to do so. Such a plea shall be examined on its own merits and in accordance with law by the Appellate Authority.
>
> Captioned writ petition is dismissed albeit preserving the window for the writ petitioner qua alternate remedy by way of a statutory appeal under section 51 of TNVAT Act. Consequently, captioned WMP is also dismissed. There shall be no order as to costs."

3.The principal contention of the learned counsel for the appellant / writ petitioner is that upon receipt of the notice dated 15.04.2021, the appellant filed a detailed reply enclosing all the relevant documents on 15.07.2021 under due

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acknowledgment, besides filing its revised return for the assessment year 2015-16 along with books of accounts and bank statement to substantiate their claim, but the same were not considered/looked into by the respondent. Further, the respondent did not furnish any reason for rejection of the books of accounts, revising and imposing tax along with penalty, which is perverse, malafide and arbitrariness. However, the learned Judge without considering these aspects, dismissed the writ petition on the ground of availability of alternate remedy. Therefore, the learned counsel prayed to allow this writ appeal by setting aside the order impugned herein.

4.The learned Additional Government Pleader (Taxes) drew the attention of this court to the affidavit filed by the respondent dated 21.02.2022 and submitted that based on the monthly returns filed for the year 2015-16, the assessment proceedings were said to have been completed under section 22(2) of the Act. Subsequently, upon verification of records, it was found that the dealer had not filed details for labour charges in their monthly returns, which resulted in passing order under rule 8(5)(d) of the TNVAT Rules, 2007 on 25.02.2021. The said order was challenged by the appellant by filing WP.No.8414/2021, in which, an interim order was passed on 01.04.2021, directing the respondent to dispose of the section 84 application. Pursuant to the same, the respondent passed the revised assessment order dated 19.07.2021. Further, the learned counsel submitted that the respondent received the following documents from the appellant, along with revised return, on 15.07.2021:

1.26 AS
2.Month wise purchase and sales
3.Contract receipt details (Ledger a/c)
4.Software development payment details (labour charges payment)

However, no bank statement was received from the appellant. Therefore, the respondent based on the available records, completed the assessment and passed the revised order on 19.07.2021, in accordance with law.

5.Heard Mr.G.Surya Narayanan, learned counsel for the appellant and Mr.Richardson Wilson,learned Additional Government Pleader (Taxes) appearing for the respondent and also perused the documents enclosed in the typed set of papers.

6.We find that the challenge made in the writ petition was to the revised assessment order dated 19.07.2021 passed by the respondent and the learned Judge dismissed the same on the ground of availability of alternate remedy. It is the grievance of the appellant that the said assessment order was passed without appreciating the objections and the documents filed by them. Upon verification of record, the learned Additional

Government Pleader appearing for the respondent fairly submitted that the respondent received the objections along with the relevant documents. The respondent also in his affidavit filed before this court, categorically admitted that before passing the revision order, the appellant filed its reply along with the documents relating to 26 AS, monthwise purchase and sales, contract receipt details (ledger a/c), software development payment details (labour charges payment) and thereafter, passed the revision order on 19.07.2021. However, in the revised assessment order dated 19.07.2021, there was no reference about the objections / reply filed by the appellant along with the documentary evidence, which amounts to non-consideration of the same by the assessing officer.

7.In such circumstances, this court, in order to provide an opportunity to the appellant and to meet the ends of justice, sets aside the orders impugned in the writ appeal as well as the writ petition. Consequently, the matter is remanded to the respondent for fresh consideration. Since the respondent has stated in his affidavit that no bank statement was filed by the appellant, the appellant shall file the bank statement along with a copy of the objections and documents already submitted on 15.07.2021,within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the respondent shall consider the same and pass appropriate orders, on merits and in accordance with law, after affording an opportunity of personal hearing to the appellant, within a period of four (4) weeks.

8.Accordingly, this writ appeal stands disposed of. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To
The State Tax Officer, Tamil Nadu Value Added Tax,
Commercial Tax Office,Jawalikadai Veedhi,
Dharapuram Assessment Circle,Dharapuram 638 656.

+1cc to Mr.G.Suryanarayanan, Advocate, S.R.No.12743
+1cc to the Special Government Pleader, S.R.No.12838

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RGA(23/03/2022)

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