IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2022

CORAM :

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

W.A. Nos. 3636, 3637, 3639 & 3646 of 2019
and
CMP.Nos.23259, 23261, 23263, 23269,
23271, 23280 & 23281 of 2019

M/s. Coimbatore Aero Based Control Systems Private Limited
Rep. by its Managing Director - A. Rafi Ahamed
No.31/1, Devi Apartments, Krishnasamy Road
Coimbatore - 641 001
Coimbatore District .. Appellant in all cases

Versus

The Assistant Commissioner (CT)
R.S.Puram (East) Assessment Circle
Coimbatore - 641 018
Coimbatore District .. Respondent in all cases

Common Prayer: Writ Appeals filed under Clause 15 of Letters Patent against the order dated 03.07.2019 passed by the learned single Judge in W.P. Nos. 1429, 1432, 1431 and 1430 of 2010 respectively.

Common Prayer in WP.No.1429 to 1432 of 2010: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the impugned proceedings of the respondent in TNGST 1940711 of 2004-2005, 2003-2004, 2005-2006 and 2002-2003 respectively dated 24.11.2009, quash the same as illegal and against the provisions of the Act.

For Appellant : M/s.R.Hemalatha (in all cases)
Senior Standing Counsel

For Respondent : Mr. Richardson Wilson
Additional Government Pleader (Taxes)
(in all cases)

COMMON JUDGMENT

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

We have heard Ms.R.Hemalatha, learned counsel for the appellant / assessee and Mr. Richardson Wilson, learned Additional Government Pleader (Taxes) for the respondent / Revenue.

2.These intra-court appeals arise from the common order dated 03.07.2019 passed by the learned Judge in W.P. Nos. 1429 to 1432 of 2010.

3.In the aforesaid writ petitions, the appellant / writ petitioner questioned the assessment orders dated 24.11.2009 passed by the respondent relating to the assessment years 2002-03, 2003-04, 2004-05 and 2005-06, raising various grounds. However, the learned Judge did not delve into the same, in view of the availability of the alternate appeal remedy under section 31 of the TNGST Act to the appellant, as the proceedings under Article 226 of the Constitution of India is clearly a rule of discretion and it is a self imposed restraint.

4.The Hon'ble Supreme Court has repeatedly held that in fiscal statutes, this rule of restraint has to be applied with utmost rigour. In this context, in Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd. and others [(1985) 1 SCC 260], it was observed by the Supreme Court as follows:

> "3. .... Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

5.Reiterating the principle laid down in the decision in United Bank of India v. Satyawati Tondon and others [(2010) 8 SCC 110], the supreme court in Authorized Officer, State Bank of Travancore and another v. Mathew K.C. [(2018) 3 SCC 85] held as follows:

> "10.In Satyawati Tondon the High Court had restrained further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding: (SCC pp.123 & 128, Paras 43 & 55)
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> > "43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this Rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute."
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> > "55.It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial

institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

6.After referring to those decisions of the Hon'ble Supreme Court, the learned Judge disposed of the writ petitions granting liberty to the appellant / writ petitioner to file an appeal against the assessment orders for the years 2002-2003, 2003-2004, 2004-2005 and 2005-2006 within a period of 30 days from the date of receipt of copy of the order, subject to the condition that they should deposit 50% of the disputed tax; and on receipt of such an appeal, the concerned appellate authority should dispose of the same on its own merits and in accordance with law, after giving due opportunity to the appellant / writ petitioner, as expeditiously as possible.

7.This court has no disagreement with the view so taken by the learned Judge qua 'dismissal of the writ petitions in view of the availability of the alternate appeal remedy', in the light of the settled legal proposition as stated supra. However, the grievance expressed by the learned counsel for the appellant with respect to pre-condition of deposit of 50% of the disputed tax, cannot be slightly brushed aside.

8.According to the learned counsel for the appellant, when the statute itself provides only 25% of the disputed tax to be paid as a pre-condition for entertaining the appeal by the appellate authority, there could not have been a further onerous condition to pay another 25%, which is arbitrary and illegal. Though the learned Additional Government Pleader (Taxes) appearing for the respondent justified the pre-condition of deposit of 50% of the disputed tax imposed by the learned Judge by contending that the same is only with an intent to protect the interest of the revenue, this court is not inclined to accept the same.

9.Since the provision itself requires only 25% of the pre-deposit for filing statutory appeal before the appellate authority, this Court is of the opinion that the order of the learned Judge, which is impugned herein, is liable to be interfered to that extent alone.

10.Accordingly, the order dated 03.07.2019 passed in WP.Nos.1429 to 1432 of 2010 stands modified by reducing the deposit of the disputed tax at 50% to 25% by the appellant as condition precedent for filing statutory appeal before the appellate authority. Consequently, the appellant shall file appeal along with deposit of 25% of the disputed tax, within a period of four weeks from the date of receipt of a copy of this judgment. On such filing, the respondent shall entertain the same, without raising any issue relating to limitation, consider the same and pass appropriate orders, on merits and in accordance with law, of-course, after providing due opportunity of hearing to the appellant, within a period of six months thereafter.

11.All the writ appeals stand disposed of in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

dhk/av

To

The Assistant Commissioner (CT)
R.S.Puram (East) Assessment Circle
Coimbatore - 641 001
Coimbatore District

+1cc to Mrs.R.Hemalatha, Advocate, S.R.No.16527

W.A. Nos. 3636, 3637, 3639 & 3646 of 2019

GMR(CO)
SU(06/04/2022)