



W.P.(MD).No.2826 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2022

CORAM

THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.2826 of 2020

and

W.M.P.(MD).Nos.2392 of 2020 and 15674 of 2021

Tvl.D.Manoharan

... Petitioner

Vs.

1. The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2. The State Tax Officer,
Madurai (Rural) South Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai – 625 020.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned proceedings of the 2nd Respondent in Asst.No. 33795162676/2012-13 dated 31.10.2019 and quash the same.

For Petitioner : Mr.B.Rooban

For Respondents : Mr.M.Siddharthan
Additional Government Pleader



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ORDER

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2. This is the second round of litigation. Earlier the assessment order was made on 11.09.2017 and the same was challenged before this Court in W.P. (MD).Nos.21375 and 21376 of 2017 on the ground that the petitioner was not granted opportunity of personal hearing and the objections that have been filed were not considered. This Court had taken a view that failure to grant personal hearing would vitiate the proceedings and secondly there was a dispute as to whether the reply stated to be filed by the petitioner was received by the 2nd respondent or not. In view of the same, this Court was pleased to set aside the impugned order and remanded the matter back to the 2nd respondent for fresh consideration, while granting an opportunity to the petitioner to submit a reply to the pre-revision notice by a registered post with acknowledgment due, within a period of two weeks from the date of receipt of a copy of that order. The relevant portion reads as follows:



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"8. In the result, the impugned assessment Order, dated 11.09.2017 in TIN No.33795162676/2012-2013 and 2013-2014, is hereby quashed and the matter is remanded back to the second respondent for fresh consideration in accordance with law. Since it is disputed by the second respondent that the reply notice dated 22.12.2015 was not received by him, the petitioner is directed to once again send a reply to the pre-revision notice by a Registered Post with acknowledgment due, within a period of two (2) weeks from the date of receipt of a copy of this order to the second respondent. Thereafter, on receipt of the reply from the petitioner, the second respondent shall pass final orders, within a period of eight weeks, after giving adequate opportunity to the petitioner to place all objections available to them under law and also grant them the right of personal hearing."

3. Pursuant to the above orders of this Court, personal hearing notice was issued on 30.05.2019 informing the petitioner to be present on 17.06.2019, for which the petitioner in response submitted a reply dated 17.06.2019. Thereafter, a pre-revision notice was issued on 21.08.2019, wherein, the following



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proposals were made:

(a) Levy of purchase tax under Section 12 of the TNVAT Act, on the premise that a perusal of books of accounts revealed that the petitioners had effected purchase of sand, bricks etc., from unregistered dealers;

(b) That while disclosing works contract receipt of Rs. 188,07,630, the petitioner had claimed deduction towards labour charges to the extent of Rs.1,55,75,300/- whereas the total value of the goods purchased during the year works out to Rs.1,35,67,659/-. It was found that the claim of deduction was dis-proportionate to the contract amount received. Further turnover difference was noticed between Form WW and monthly returns compared to the purchase turnover reported.

In view of the above defect allegedly found deemed sale value of Rs.3,39,82,487/- was arrived at by way of best judgment by adding direct expenses at 3% and gross profit at 15% in addition to the total purchase and labour charges.

(c) Verification of web report difference while comparing the purchase details from other dealer Annexure-I with monthly return certain discrepancies were noticed.



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4. On the basis of the above, the turnover of Rs.6,96,54,247/- was proposed to be treated as escaped turnover resulting in tax liability of Rs. 45,94,833/-.

While proposing to levy penalty @ 150% on the escaped turnover.

5. In response to the above the petitioner submitted his reply dated 17.06.2019 *inter-alia* raising the following objections :

Purchase Tax:

The petitioner submitted that new material is a condition precedent for invoking powers of reassessment. In the present case there are no new material with the respondents, thus, the assumption of jurisdiction in the absence of any new material is unsustainable and there is no nexus to revise the same once again without any new facts.

Without prejudice to the above contentions, regarding the proposal to levy of purchase tax on the purchase of jelly, sand, bricks, etc. from unregistered dealers and also other goods purchased from the local dealers, which were used in the works contract, it was submitted that the goods are sold as such without any change/manufacture and thus not liable to purchase tax. Furthermore, in respect of the goods, the petitioner had paid the corresponding tax on the deemed sale value of the said goods vide monthly returns. Since taxes on the deemed sale value of the said goods had been paid, the levy of purchase tax does not arise at all.



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Labour Charges:

While arriving at the deemed sale value of materials involved in the works contract, labour and other like charges ought to be deducted. The respondents had omitted to deduct the following items:-

- 1.Tender expenses.
- 2.Service charges.
- 3.Labour welfare expenses.
- 4.Payment of tax made by us.
- 5.Gross profit accrued out of labour and other like charges.
- 6.depreciation on the capital goods and interest charged by the Bankers.
- 7.Tax payment made by the dealer under VAT Act and others.

Further, the deemed sale value proposed is unsustainable inasmuch as it has been arrived at by the respondents including the following amounts which do not form part of the value of the goods involved in the execution of works contract.

- 1.The payment made to the Chief Engineers, Engineers, Site Engineers and their helpers.
2. Profit earned from Labour and other like charges.
- 3.Interest paid to the Bank (as per judgment reported in 34 VST 53).
- 4.Depreciation value of tools and machinery.
5. Value of materials consumed in the works contract.
6. Profit earned from the consumed materials.
7. Payment of tax, etc.



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6. On considering the objections, the 2nd respondent confirmed the proposal on the ground that the objections were not convincing in respect of purchase tax and the claim of deduction towards labour charges. The primary grounds on which the petitioner had challenged is that the order invoking Section 12 of TNVAT Act and failure to grant deduction in terms of labour charges claimed by the petitioner is without jurisdiction and that the order also stands vitiated for having been made in violation of principles of natural justice.

7. It was submitted by the learned counsel for the respondents that the impugned order is an appealable order and there is no good reason for the petitioner to by-pass the statutory remedy and thus it was further submitted that the question arising out of the Assessment Order are essentially mixed questions of fact and law which may have to be investigated and it was open to the petitioners challenging the impugned order of assessment to avail the appropriate statutory remedy by way of an appeal.

8. Heard the learned counsel on either side and perused the materials available on record.



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9. This Court finds that the question as to whether Section 12 of TNVAT Act would get attracted or otherwise to the present case would require investigation into the following facts amongst others:

a) Whether the goods were purchased in circumstances in which no tax is payable.

b) Whether the goods are disposed of by way of a sale in the State – in the present case it is stated that the goods which are sought to be taxed under Section 12 have been used in the execution of works contract and thus levy of purchase tax is bad.

To decide the above questions, it may be necessary for the petitioner to demonstrate by letting in evidence that the goods purchased had been used in the execution of works contract in the same Form to fall within the exception carved out in Section 12(1)(b) of the TNVAT Act. The above being essentially mixed question of fact and law. This Court finds that the challenge as to the levy of purchase tax by a writ petition may not be sustainable.

10. Similarly, the claim of deduction towards labour and service charges again would require examination of documents and books of accounts to find that the nature of the expenses whether the same represents goods or labour and



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service charges is a mixed question of fact and law. In the circumstances, this Court is of the view that the examination of those fact is beyond the realm of judicial review under Article 226 of the Constitution of India. Moreso, when a statutory remedy by way of an appeal is available under TNVAT Act. Though a faint attempt was made to suggest that the orders are in violation of principles of natural justice, this Court is of the view that pursuant to the orders of this Court notices were issued and personal hearing was extended and objections filed and considered. It is only thereafter, the Assessing Officer has passed the orders on the basis that the objections filed were not convincing. In such circumstances, this Court is not inclined to accept the claim of the petitioner that there is violation of principles of natural justice.

11. It is trite law that adjudication of disputed questions of fact is outside the purview of Article 226 of the Constitution of India. In this regard, it may be relevant to refer to the following judgments :

(i) *State Bank of Travancore v. Mathew K.C.*, reported in (2018) 3 SCC 85:

"10. In United Bank of India v. Satyawati Tondon (2010) 8 SCC 110, the High Court had restrained Satyawati Tondon v. State of U.P., [2009 scc OnLine All 2608] further proceedings



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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).

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



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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."

(ii) *Thansingh Nathmal v. Supdt. of Taxes*, reported in (1964) 15 STC

468 :

"7.....The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the



writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."

(iii) Assistant Collector of Central Excise vs. Dunlop India Ltd.,

reported in **(1985) 1 SCC 260** and the relevant paragraph 3 reads as under:

"3. In Titaghur Paper Mills Co. Ltd. v. State of Orissa [(1983) 2 SCC 433, it was held that where the statute itself provided the petitioners with an efficacious alternative remedy by way of an appeal to the Prescribed Authority, a second appeal to the tribunal and thereafter to have the case stated to the High Court, it was not for the High Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution ignoring as it were, the complete statutory machinery. That it has become necessary, even now, for us to repeat this



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admonition is indeed a matter of tragic concern to us. 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.

12. Accordingly, this Writ Petition is dismissed with liberty to the petitioner to file an appeal. The petitioner seeks four weeks time from the date of receipt of a copy of this order to file an appeal. This Court is inclined to accede to the above request which is not resisted seriously by the respondents. If appeal is filed within four weeks from the date of receipt of a copy of this order, the same shall subject to complying with the other statutory conditions relating to appeal including pre-deposit would be entertained and orders passed



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in accordance with law. Original impugned order may be returned to enable the petitioner to file an appeal. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes/ No
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MOHAMMED SHAFFIQ, J.

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