BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).Nos.9056, 9058, 9060 and 9062 of 2021
and
WMP.(MD).Nos.6821, 6817, 6819 and 6823 of 2021

Cauvery Saw Mill,
Represented by its Managing Partner Shri.Rajesh N Patel,
No.1/468, Tenkasi Road, Piranoor Border,
Shencottai- 627 809. ... Petitioner in all W.Ps.

Vs.

1.State Tax Officer (Review Cell-1),
Office of Deputy Commissioner (ST) (Inspection),
C.T.Buildings, Palayamkottai, Tirunelveli,
Tamil Nadu - 627 002.

2.State Tax Officer (State Tax Intelligence Wing),
Office of Deputy Commissioner,
State Tax Intelligence Wing,
Collection and Tax Due Section,
Tirunelveli, Tamil Nadu- 627 002. ... Respondents in W.Ps.

Prayer in WP.(MD).No.9056 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in GSTN. 33AACFC7506K1ZL/2017-18 dated 10.12.2020 and quash the same as being violative of natural justice and cryptic and consequently direct the first respondent to hear the matter afresh by taking into consideration all relevant documents and explanations put forth by petitioner.

Prayer in WP.(MD).No.9058 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in GSTN. 33AACFC7506K1ZL/2018-19 dated 10.12.2020 and quash the same as being violative of natural justice and cryptic and consequently direct the first respondent to hear the matter afresh by taking into consideration all relevant documents and explanations put forth by petitioner.

Prayer in WP.(MD).No.9060 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in GSTN. 33AACFC7506K1ZL/2019-20 dated 10.12.2020 and quash the same as being violative of natural justice and cryptic and consequently direct the first respondent to hear the matter afresh by taking into consideration all relevant documents and explanations put forth by petitioner.

Prayer in WP.(MD).No.9062 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in GSTN. 33AACFC7506K1ZL/2020-21 dated 10.12.2020 and quash the same as being violative of natural justice and cryptic and consequently direct the first respondent to hear the matter afresh by taking into consideration all relevant documents and explanations put forth by petitioner.

For Petitioner : Mr.Ananda Gomathy Murugesan

For Respondents : Mr.Veerakathiravan
Additional Advocate General
Assisted by Mr.M.Prakash
Additional Govt. Pleader

COMMON ORDER

These batch of writ petitions are filed challenging the orders of assessment under the Goods and Service Tax Act, 2017, for the periods 2017-18, 2018-19, 2019-20 and 2020-21 on the premise that the 1st respondent has passed these orders contrary to the material on record and without taking into account the Trade Practice in relation to Timber and that the orders are non-speaking. The petitioners in all these writ petitions are one and the same hence, referred to as "petitioner" for the sake of brevity.

2.1. It is submitted that the petitioner is engaged in trading of Timber procured locally and from International Market. That the petitioner re-sells the timber so procured after cutting the timber into required sizes. The total and taxable turnover reported by the petitioner in Form GSTR-3B during the relevant periods, is tabulated hereunder:

Name of the taxable person	Total and taxable income	Period/ year
Cauvery Saw Mill	Rs.4,21,05,534/-	2017-18
	Rs.23,01,252/-	2018-19
	Rs.14,50,909/-	2019-20
	Rs.1,25,040/-	2020-21

2.2. There was an inspection of the petitioner's place of business pursuant to an authorisation issued by the Joint Commissioner (S.T.) (Intelligence Wing), Tirunelveli, on 10.09.2020 and 11.09.2020 at the following places:

i) The Principal place of business, Shencottai, Tenkasi District.

ii) The Additional Place of business, Thoothukudi District.

iii) The Additional Place of business, Trichy.

2.3. The inspections were carried out simultaneously in the aforesaid places of business. The details of the defects noticed during the course of inspection, in each of the orders are tabulated below:

S.No	Period/ year	GSTIN	Issues	Reply/ Remarks given by the Inspecting Officer
1	2017-18	GSTN.33AACFC7506K1ZL	Defect No:1 Claimed input tax credit.	Not entitled to claim ITC: Failure to produce copies of invoices, transport documents, proof for actual receipt of goods.
			Defect No:2 Discrepancy in i) Opening stock of goods reported in the Trading and Profit and Loss Account of the purchase and sales effected from April 2017 to June 2017. ii) Inward and outward supplies effected from July, 2017 to October, 2017	Disallowed the outward supply to the extent of Rs.10.55 crores.
2	2018-19	GSTN.33AACFC7506K1ZL	Defect No:1 Claimed input tax credit.	Not entitled to claim ITC: Failure to produce copies of invoices, transport documents, proof for actual receipt of goods.

S.No	Period/ year	GSTIN	Issues	Reply/ Remarks given by the Inspecting Officer
3	2019-20	GSTN.33AACFC7506K1ZL	Defect No:1 Claimed input tax credit.	Not entitled to claim ITC: Failure to produce copies of invoices, transport documents, proof for actual receipt of goods.
			Defect No:2 Discrepancy in i) Payment made towards Business promotion.	Failure to produce documents/ records for payment towards Business Promotion expenses for Rs. 4,02,350/-.
4	2020-21	GSTN.33AACFC7506K1ZL	Defect No:1 Claimed input tax credit.	Failure to produce copies of invoices, transport documents, proof for actual receipt of goods.

2.4. From the above table it would be evident that the issue of claim of input tax credit without actual receipt of goods is common for all the four period/ years. For the period/ year 2017-18, in addition to the above defect, it was also noticed that the petitioner's claim of outward supply was not genuine but fictitious and therefore disallowed. While for the period/ year 2019-20, there is an additional issue wherein the claim of payments towards Business Promotion expense to the extent of Rs.4,02,350/- was disallowed/ rejected for want of documents.

3.1. On 13.10.2020, on the basis of inspection, an intimation was served on the petitioner for the relevant period/ years under Section 74(1) in Form GST DRC-01A. In response thereto, the petitioner submitted documents in relation to the defects pointed. On verification of the same, a Demand cum Show Cause Notice was issued on 02.11.2020 under the TNGST Act, 2017 containing proposals on the basis of the above defects. In response to the above, the petitioner submitted their objections on 30.11.2020 *inter alia* submitting as under:

a. That invoices were produced before the Inspecting Officer on 10.09.2020 (in respect of Defect 1 in all the relevant period/ years)

b. That the Trade Practice insofar as Timber logs and sizes lying at Thoothukudi Timber Yard/ godown is that they are sold and bought without corresponding movement of goods, although there would be transfer of title/

ownership (in respect of Defect 2 in the period/ year 2017-18) multiple times before there is a sale resulting in actual movement of the goods.

3.2. With regard to the second defect again, it was submitted that the proposal cannot be sustained as it is contrary to the Trade Practice relating to timber. In other words, it was submitted that timber was procured / purchased and sold without any physical movement of goods.

4. The Assessing Officer had however on consideration of the reply rejected the contentions on the following premise:

a. There is no transfer of property and that the transactions are mere paper transactions. The petitioner had contravened the conditions laid down under Section 16 of the TNGST Act, 2017, and thus, not entitled to claim Input Tax Credit.

b. The Assessing Officer has also proceeded to reject the response with reference to Defect no.2 (in period/ year 2017-18) on the premise that the invoices were issued without actual supply of goods by the petitioner. Further, the alleged copy of the agreement which was furnished by the petitioner was found to be incomplete.

5. On the basis of the above, the proposals were confirmed and penalty under Section 125 of CGST Act and interest under Section 50(3) of the CGST Act, 2017 (CGST and TNGST Act) were imposed.

6. These writ petitions are filed challenging the above order on the ground of violation of principles of natural justice. From the facts recorded above, it is evident that the procedure that is contemplated before passing of final orders of assessment under Section 74 (1) has been complied with.

7. The question whether a taxable person is entitled to input tax credit or otherwise would have to be decided on the basis of compliance with the conditions set-out under Section 16 of the GST Act, 2017, which reads as under:

"16. Eligibility and conditions for taking input tax credit.—

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect

of any supply of goods or services or both to him unless,— (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

[(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;]39

(b) he has received the goods or services or both.

[Explanation.— For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment: Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice *by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:*

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon......"

A reading of the above would show that there are four substantial conditions that have to be cumulatively satisfied to claim Input Tax Credit:

a. That the claimant must be in possession of a Tax Invoice or Debit Note issued under the Act.

b. That the claimant must have received the goods or services or both in respect of which input tax credit is claimed.

c. That the taxes charged in respect of the supply is paid by the supplier.

d. That the return under Section 39 of the Act is furnished by the supplier.

8. It is submitted by the learned counsel for the Respondents that the impugned orders rejecting the claim of input tax credit and also whether the sales made by the petitioners are genuine are essentially questions of fact

which ought to be decided by letting in and examining/ appreciating evidence so let in. It is further submitted that the impugned orders are passed after complying with the procedure contemplated under the Act. The impugned orders can be challenged by way of a statutory appeal and there is no reason to by-pass the statutory remedy.

9. Heard both sides and perused the materials available on record.

10. The impugned order has proceeded to reject the claim of the petitioner on the ground that goods were not actually involved. A reading of the impugned order would show that the following questions of fact are in dispute:

a. Whether goods are involved or not.

b. Whether the alleged supply of timber is genuine or fictitious.

c. Whether there was transfer of title.

d. What is the trade practise in relation to Timber.

e. Whether there was constructive or notional delivery of goods.

f. Whether the alleged supplier/ receipient is real or fictitious.

11. This Court cannot examine the above disputed questions of fact, more so, in the light of the fact, this Court has found that the impugned orders have been made after complying with the procedure set-out under Section 74(1) of the GST Act, 2017 and has been made setting out reasons in support of the conclusion. The very genuineness of the transaction was doubted, while rejecting the claim of Input Tax Credit. Further, the reply given by the petitioner is vague inasmuch as he has not furnished details of the purchasers or the mode of transportation, if any. Nor can this Court come to a conclusion as to the trade practice in relation to Timber on the basis of assertions/averments in the affidavit, inasmuch as the same ought to be decided on the basis of evidence/material.

12. It is submitted by the learned counsel for the petitioner that the reasons in the impugned orders are inadequate / insufficient, warranting interference for the respondents to arrive at the above conclusion. The above contention viz., the reasons are inadequate / insufficient cannot be a reason warranting interference under Article 226 of the Constitution of India as it has been consistently held that if there is some evidence/reason,

examination of adequacy or sufficiency of the same is alien to the jurisdiction under Article 226 of the Constitution of India.

13. It is trite law that adjudication of disputed questions of fact is outside the purview of Article 226 of the Constitution of India. It may be necessary to remind ourselves that in fiscal matters one must exercise greater restraint while exercising powers under 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 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 aggrievedperson 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 insitutions. 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."

(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.”*

(emphasis supplied)

(iii) ***Assistant Collector of Central Excise vs.Dunlop India Ltd.,*** reported in ***(1985) 1 SCC 260*** :

"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 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."*
>
> *(emphasis supplied)*

13.1 It may also be relevant to refer to the recent judgment of the Hon'ble Supreme Court of India in the case of ***State of Maharastra and Others vs. Greatship (India Limited)***, reported in ***2022 SCC Online SC 1262***, wherein it was held as under:

> *"14. ......the High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India challenging the assessment order in view of the availability of statutory remedy under the Act."*

14. Yet another reason why it may not be appropriate to entertain these writ petitions is that the challenge to the impugned orders are on the ground of inadequacy or insufficiency of reasons/ materials, which again is beyond the realm of judicial review. In this regard, it may be relevant to refer to the following judgments:

*1. **S. Ganga Saran & Sons (P) Ltd. v. ITO, reported in (1981) 3 SCC 143 :***

> *"6.....The court, of course, cannot investigate into the adequacy or sufficiency of the reasons which have weighed with the Income Tax Officer in coming to the belief......"*

*2. **Partap Singh (Dr) v. Director of Enforcement, reported in (1985) 3 SCC 72 :***

> *9......It was also submitted that the reasons must be sufficient for a prudent man to come to the conclusion that the income escaped assessment and that the Court can examine the sufficiency or adequacy of the reasons on which the Income Tax Officer has acted. Negativing all the limbs of the contention, this Court held that*
>
> *"if there are in fact some reasonable grounds for the Income Tax Officer to believe that there had been any non-disclosure as regards any fact, which could have a material bearing on the question of under-assessment, that would be sufficient to give jurisdiction to the Income Tax Officer to issue notice under Section 34".*
>
> *The Court in terms held that whether these grounds are adequate or not is not a matter for the court to investigate."*

*3. **DGIT v. Spacewood Furnishers (P) Ltd., reported in (2015) 12 SCC 179 :***

*"**25.** The remaining findings of the High Court with regard to the satisfaction recorded by the authorities appear to be in the nature of an appellate exercise touching upon the sufficiency and adequacy of the reasons and the authenticity and acceptability of the information on which satisfaction had been reached by the authorities. Such an exercise is alien to the jurisdiction under Article 226 of the Constitution."*

4. ***State of J&K v. Trikuta Roller Flour Mills (P) Ltd., (2018) 11 SCC 260 :***

"9.....the Court will not examine the sufficiency or adequacy of the reasons or materials, in the manner of an appellate authority, to substitute its own wisdom for that of the Government....."

15. For all the reasons stated above, these writ petitions are dismissed. However, it is made clear that the period spent in these writ petitions shall be excluded in reckoning the limitation, if any, for filing statutory appeal. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

24.11.2022

Index: Yes/No
Speaking order: Yes/No
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