WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 03.01.2022
CORAM
THE HON'BLE MR. JUSTICE M.SUNDAR
W.P(MD)No.23217 of 2021
and W.M.P.(MD)No.19645 of 2021

M/s.M.S.Marketing,
Represented by its Proprietor M.Selvi,
No.8-21 A, Kaliamman Koil Street,
Vilangudi, Madurai - 625 018. ... Petitioner

-Vs-

The State Tax Officer,
West Veli Street Assessment Circle,
Commercial Taxes Buildings,
Madurai - 20. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent in Roc.No.in TIN No.33/2015-2016 dated 08.04.2021 impugned order for the assessment year 2015-2016 and 2016-17 in TIN No.33725024829/2 issued by the respondent and quash the same is wholly without jurisdiction, being contrary to the judgment of this Hon'ble Court reported in the case of The Assistant Commissioner (CT), Koyambedu Assessment Circle, Chennai Vs. Infiniti Wholesale Limited reported in [2017] 99 VST 430 and direct the respondent to conduct an enquiry with other end dealers as contemplated under Section 27 of the TNVAT Act 2006 and pass a assessment order afresh in the light of the guidelines enunciated in the batch of writ petitions in the case of M/s.JKM Solutions Private Limited reported in 2017 (99) VST 343 (Mad) including the opportunity of personal hearing to the petitioner.

For Petitioner : Mr.G.Kasinatha Durai

For Respondent : Mr.M.Lingadurai,
Special Government Pleader.

O R D E R

In the captioned main writ petition 'two orders both dated 15.11.2018 bearing reference TIN:33725024829/2016-17 and TIN 33725024829/2015-16' have been assailed (hereinafter 'impugned orders' for the sake of convenience and clarity). One impugned order pertains to assessment year 2015-16 and the other pertains to assessment year 2016-17.

https://hcservices.ecourts.gov.in/hcservices/

2. Impugned orders have been made under Section 27 of 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)' [hereinafter 'TNVAT Act' for the sake of convenience and clarity]. To be noted, this is second round of litigation. Earlier, writ petitioner came to this Court vide W.P.(MD)No.4760 of 2021 and that was disposed of by a Hon'ble Single Judge vide order dated 09.03.2021. In that order, the respondent was directed to furnish copies of the orders qua assessment years 2015-2016 and 2016-2017, pursuant to which impugned orders were served on the writ petitioner under cover of a letter dated 08.04.2021. The prayer in the captioned writ petition is not happily worded but it is the case of the counsel for writ petitioner that impugned orders were served on the writ petitioner under cover of one letter dated 08.04.2021 and the both orders (impugned orders) have been assailed.

3. Notwithstanding very many averments in the writ affidavit and notwithstanding several grounds raised in the writ affidavit, learned counsel for writ petitioner assailed the impugned orders on two points and they are as follows:

a) writ petitioner was not given reasonable opportunity to show cause before the impugned orders were made and

b) as it is a case of alleged mismatch qua ITC (Input Tax Credit) the Assessing Officer-respondent has not verified with the dealer at the other end.

4. Mr.M.Lingadurai, learned Special Government Pleader accepted notice on behalf of the lone respondent and responded in the following manner:

a) with regard to the first point, learned State Counsel drew the attention of this Court to portions in the impugned orders where it has been mentioned that two notices dated 30.11.2017 and 01.10.2018 for personal hearing have been issued to the writ petitioner-dealer calling for objections but the writ petitioner- dealer had not responded and

b) the Assessing Officer, notwithstanding the writ petitioner not responding has made comparison based on available records.

5. In response to the above, learned counsel for writ petitioner reiterated his submissions made in the opening arguments which have been captured elsewhere in this order supra.

6. This Court has carefully considered the rival submissions and this Court is not inclined to interfere qua impugned orders and the reasons are as follows:

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

a) regarding the first point of opportunity not being given, as rightly pointed out by learned State Counsel two notices one dated 30.11.2017 and another dated 01.10.2018 have been issued affording personal hearing to the writ petitioner and calling for objections. There is a clear mention about one of these two notices i.e., pre-revisional notice i.e., 30.11.2017 notice and this is contained in paragraph 4 of the writ affidavit. Writ petitioner has not even mentioned whether he responded to the notice or not. The writ petitioner has not responded to the notice regarding the other pre-revision notice dated 01.10.2018 and there is no averment in the writ petition regarding the notice dated 01.10.2018. Therefore, the first argument predicated on opportunity not being given to the writ petitioner falls flat on its face.

b) Before going to the next point, this Court deems it appropriate to remind itself that when it comes to legal drill of revision under Section 27 of TNVAT Act, it will suffice if a reasonable opportunity to show cause is given. In other words, personal hearing is not statutorily imperative and it is only optional at the discretion of the Assessing Officer. This position of law was laid down in State Bank of India Officer's Association case being W.P.No.22634 of 2019 ***[State Bank of India Officer's Association (CC) - SBIOA Vs. The Assistant Commissioner (ST), Chennai]***, dated 01.08.2019. This order was carried in appeal by way of an intra Court appeal in W.A.No.4073 of 2019 and a Division Bench of this Court dismissed the State appeal. In this case, the respondent has chosen to give a personal hearing but the writ petitioner has not availed the same (as already alluded to supra). There is a clear mention about atleast one of the pre-revision notices viz., pre-revision notice dated 30.11.2017 in the writ petition more particularly in paragraph 4 of the writ affidavit.

c) This takes this discussion to the second point regarding mismatch verification. A careful perusal of the impugned orders reveal that the respondent has made some verification *inter alia* on the basis of available records (besides resorting to the departmental intranet website) and thereafter, accepted the proposals. Therefore, it cannot be gainsaid that verification qua mismatch has not been done at all. Though not specifically pointed out, it is obvious that this argument is predicated on JKM Graphics principle ***{JKM Graphics Solutions Private Limited Vs. CTO reported in (2017) 99 VST 343 (Mad)}***. JKM principle does not aid the petitioner in the case on hand as there is some discussion about correlation qua mismatch albeit

https://hcservices.ecourts.gov.in/hcservices/

resorting available records. There is another reason as to why the JKM principles does not come to the aid of the writ petitioner in the instant case and that reason is writ petitioner has not responded to the pre-revisional notices.

WEB COPY

d) There is yet another reason as to why this Court is not inclined to interfere qua the impugned orders and that is the alternate remedy Rule. The writ petitioner has an alternate remedy i.e., an appeal remedy under Section 51 of TNVAT Act. Alternate remedy no doubt is not an absolute rule and it is a rule of discretion. It is a self imposed restraint qua writ jurisdiction. Be that as it may, Hon'ble Supreme Court starting from ***Dunlop India*** case ***[Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd., and others*** reported in ***(1985) 1 SCC 260]*** in a long line of case laws has repeatedly held that the alternate remedy rule has to be very strictly enforced with utmost rigour when it comes to fiscal Statutes. The other case laws are ***Satyawati Tandon [United Bank of India Vs. Satyawati Tondon and others*** reported in ***(2010) 8 SCC 110]*** and ***K.C.Mathew [Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C.*** reported in ***(2018) 3 SCC 85].*** Relevant paragraph in ***Dunlop*** case law is paragraph No.3 and relevant portion of the same reads 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. <u>Surely matters involving the revenue where statutory remedies are available are not such matters</u>. 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.'*

(***Underlining made by this Court to supply emphasis and highlight***)

WEB COPY

e) ***Satyawati Tandon*** principle was reiterated by Hon'ble Supreme Court in ***K.C.Mathew*** *case.* Relevant paragraph in ***K.C.Mathew*** case law is paragraph 10 and the same reads 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)*

"43. Unfortunately, the High Court overlooked the settled law that the <u>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</u>, 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.

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.'

(underlining made by this Court to supply emphasis and highlight)

https://hcservices.ecourts.gov.in/hcservices/

f) One other case law of significance is a recent judgment of a three member Bench of Hon'ble Supreme Court in ***Commercial Steel Limited*** case **[*Civil Appeal No 5121 of 2021, The Assistant Commissioner of State Tax and Others Vs. M/s Commercial Steel Limited*]**. The three member Bench of the Honble Supreme Court speaking through Hon'ble Justice Dr.Dhananjaya Y Chandrachud, set out the exceptions to the rule of alternate remedy and made it clear that only in exceptional cases (where the exceptions are attracted), there would be interference in writ jurisdiction. Relevant paragraphs in Commercial Steel Limited case law are paragraph Nos.11 and 12, which read as follows:

'11 The respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is: (i) a breach of fundamental rights; (ii) a violation of the principles of natural justice; (iii) an excess of jurisdiction; or (iv) a challenge to the vires of the statute or delegated legislation.

12. In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was CA 5121/2021 7 not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent.'

The only point that comes across as a possible exception is NJP i.e., Natural Justice Principle violation. In the instant case on hand, there is a clear mention about pre-revision notice dated 30.11.2017 in the writ affidavit itself, therefore faint NJP argument vanishes / pales into insignificance and sequitur is no exception has been made out warranting interference in writ jurisdiction.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

h) Be that as it may, though there is a mention about atleast one of the two pre-revision notices, there is no averment in the writ petition as to why the writ petitioner did not avail the opportunity given. As already alluded to supra, in the case on hand, though personal hearing is only optional, the revisional authority i.e., respondent has chosen to give personal hearing to the writ petitioner. Absent any explanation by the writ petitioner as to why he did not avail the same, this Court is not inclined to entertain writ petitioner's campaign against the impugned orders in writ jurisdiction. In other words, the NJP argument becomes a non-starter too owing to this reason also.

7. This Court having set out the reasons for not acceding to the prayer of the writ petitioner now sets out infra the conclusion and that is the captioned writ petition fails.

8. Before parting with the matter, it is made clear that if the writ petitioner chooses to file statutory appeal under Section 51 of TNVAT Act, it will be open to the Appellate Authority to consider the same (subject to limitation and subject to pre-deposit condition, if any) on its own merits and in accordance with law uninfluenced by any observation made in this order.

9. Ergo, captioned writ petition is dismissed. Consequently, captioned WMP is also dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsm

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

https://hcservices.ecourts.gov.in/hcservices/

To

The State Tax Officer,
West Veli Street Assessment Circle,
Commercial Taxes Buildings,
Madurai - 20.

WEB COPY

+1 CC to M/s.SPL.GP (SR-175[F] dated 04/01/2022)

+1 CC to M/s.KASINATHADURAI, Advocate (SR-443[F] dated 05/01/2022)

W.P(MD)No.23217 of 2021
and W.M.P.(MD)No.19645 of 2021
03.01.2022

RK(24/01/2021) 8P 4C

https://hcservices.ecourts.gov.in/hcservices/