BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.11.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.25291 of 2022
and
W.M.P.(MD)No.19391 of 2022

M/s.Chinnamanur Sri Annai
Abirami Chit (P) Ltd.,
Rep by its Managing Director
S.Samandi,
429, South Care Street,
Seepalakottai Road,
Chinnamanur, Theni District. ... Petitioner

Vs.

1.The Assistant Commissioner of GST
& Central Excise,
Dindigul-II Division,
Dindigul.

2.The Superintendent of CGST & Central
Excise,
Theni Range,
Theni. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records in Order-in-Original No.MDU-ST-AC-08-2021 dated 30.11.2021 issued by the 1st Respondent and quash the same.

For Petitioner :Mr.S.Karunakar
For Respondents :Mr.R.Nandakumar
Standing Panel Counsel asst., by
Mrs.Ragaventhree
Junior Standing Counsel

O R D E R

This writ petition is filed challenging the Order-in-Original No.MDU-ST-AC-08-2021 dated 30.11.2021 passed by the 1st Respondent under Section 73 of the Finance Act, 1994.

2.The petitioner is a foreman to a chit fund under the Chit Funds Act and holder of service tax and registered under the category of Banking and Financial Services. On the basis of intelligence gathered by the Superintendent of CGST and Central Excise, Theni Range, a letter in O.S.No.425/2019, was issued on 24.06.2019 by the Superintendent of CGST and Central Excise, Theni, requesting the Distrit Registrar, Peiyakulam to provide details of taxable services rendered by the noticee and amount received for the taxable services so rendered to their subscribers. A show cause notice, dated 23.07.2020 No.06/2020-ST was issued to the petitioner proposing to treat a sum of Rs.75,62,940/- for the period 2015-16 and 2016-17 as representing the value of taxable services. A reply was filed by the petitioner that the abatement must be granted as provided vide Notification No.26/2012-ST dated 20.06.2012, while also submitting that the invocation of extended period is unwarranted. It is the case of the petitioner that the above aspects have not been considered and therefore, the assessment order suffers from non-application of mind on the part of the Assessment Officer.

3.The learned Standing Counsel, appearing on behalf of the respondents submitted that the respondents have considered the objections and passed a reasoned order and despite the fact that repeated notices were issued for personal hearing, they were not availed by the petitioner, the relevant portion of the order is extracted below:

> "*The tax payers did not turn-up for the Personal Hearing posted on 22.10.2020. Personal hearing was again offered on 03.12.2020 and they did not turn-up for the Personal Hearing. However they submitted a written reply dated 03.12.2020 stating that they were unable to attend PH and requested for fixing PH after 15.01.2021. Personal hearing was again offered on the*

basis of their request by the adjudicating authority on 19.01.2021. Meanwhile a written reply 'nil' dated has been received from the Noticee on 15.01.2021. Another Personal hearing was offered on 09.03.2021. The noticee had also not turned-up for the Personal Hearing.

Further personal hearing was offered on 05.10.2021. The noticee had also not turned-up for the Personal Hearing on 05.10.2021. Hence, ex-parte order."

4.In any view, it was submitted that both the objections were considered by the respondent and it would be evident from a reading of the order in particular para 7 and 8, which reads as under:

"7.3 As per Notification No. 26/2012-S.T amended by Notification No. 8/2016-S.T., dated 01-3-2016 Services provided by foreman to a chit fund under the Chit Funds Act, 1982 are to be taxed at an abated value of 70% [i.e., with abatement of 30%], subject to the condition that Cenvat credit of inputs, input services and capital goods nas not been availed with retrospective effect from the date of enactment of Finance Act, 2015. In the present case, the noticee have not paid Service tax and not filed return and not claimed any abatement after fulfilling the conditions laid down in the said Notification. In view of the above, the full

value is taken into account for the purpose of demanding vice Tax. Though they have obtained registration from the department, they have not paid Service tax and not filed ST.3 returns within the stipulated period. It also appears that they did not furnish the details when called for by the department.

7.4 Regarding threshold exemption of 10 lakhs sought for the period 2015-16 by the noticee, no material evidences has been produced by the noticee that all their transactions during 2014-15 are completely exempt or below 10 lakhs.

8. INVOKING EXTENDED PERIOD:

It appears that though the Notices have registered with the department and rendered taxable services, they have not paid service tax and not filed ST.3 returns. The Noticee have not responded to the letters sent by the department. But, for the detection of the case by the Superintendent of CGST and Central Excise, Theni Range through third party sources, the non-payment of service tax would have gone unnoticed resulting in loss of revenue to the Government exchequer. In view of the above, it appears that the noticee have suppressed the taxable value and contravened the provisions of the Act with intent to evade payment of service tax, and hence proviso to Section 73(1) of the Act is rightly *invokable to recover the service tax and they are liable for penalty under Section 76 and 78 of the Act.*

In view of the above, I hold that the extended period of limitation can rightly be invoked against the noticee."

It was thus submitted that the writ petition ought not to be entertained, inasmuch as, there is a statutory remedy by way of an appeal.

5. This Court finds that there is a merit in the submission made by the learned Standing Counsel appearing on behalf of the respondent, when there is a statutory remedy, normal rule is not to by-pass the same, unless it is shown that the order suffers from gross violation of principles of natural justice or bad for want of jurisdiction. This Court finds that the impugned order has been made after issuing a notice and considering the objection. Personal hearings though granted was not availed of by the petitioner. This Court thus finds no reasons for interfering with the order under Article 226 of the Constitution of India. In this regard, it may be useful to refer to the judgment of the Hon'ble Supreme Court in the case of ***Thansingh***

Nathmal v. Supt. of Taxes, reported in ***AIR 1964 SC 1419*****,** wherein, the Constitution Bench of this Court made it amply clear that although the power of the High Court under Article 226 of the Constitution is very wide, the Court must exercise self-imposed restraint and not entertain the writ petition, if an alternative effective remedy is available to the aggrieved person. In para 7, the Court observed thus :

> *"7. Against the order of the Commissioner an order for reference could have been claimed if the appellants satisfied the Commissioner or the High Court that a question of law arose out of the order. But the procedure provided by the Act to invoke the jurisdiction of the High Court was bypassed, the appellants moved the High Court challenging the competence of the Provincial Legislature to extend the concept of sale, and invoked the extraordinary jurisdiction of the High Court under Article 226 and sought to reopen the decision of the taxing authorities on question of fact. 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 to 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."

Even though the High Court can entertain a writ petition against any order or direction passed/action taken by the State under Article 226 of the Constitution, it ought not to do so as a matter of course when the aggrieved person could have availed of an effective alternative remedy in the manner prescribed by law.[1] Therefore, the present writ petition is liable to be dismissed and the petitioner may challenge the same by way of a statutory appeal. If so advised the petitioner may file an appeal, the time spent in pursuing the writ petition under the bonafide belief that the petitioner can successfully question the impugned order by way of writ petition would be excluded for the purpose of reckoning the limitation if appeal is filed.

6.In view of the above, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

08.11.2022

Index : Yes / No
Speaking Order : Yes / No
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1 *Baburam Prakash Chandra Maheshwari* v. *Antarim Zila Parishad* [*Baburam Prakash Chandra Maheshwari* v. *Antarim Zila Parishad*, AIR 1969 SC 556] and also *Nivedita Sharma* v. *COAI* [*Nivedita Sharma* v. *COAI*, (2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947]

To

The Superintendent of CGST & C.Excise
Sivakasi-I Range,
Sivakasi.

MOHAMMED SHAFFIQ, J.

sbn

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and
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