



W.P. No.10819 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.10819 of 2021

and

W.M.P. Nos.11446 and 11447 of 2021

M/s.Kurlon Limited,
Represented by its Manager,
No.194, Pycrofts Road,
Royapettah, Chennai-600 014.

... Petitioner

Vs.

The Commercial Tax Officer,
Thiruvallikeni Assessment Circle,
Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the Respondent in its proceedings in TIN: 33160680798/2013-14, quash the assessment order dated 03.03.2021 passed therein.

For Petitioner : Mr.C.Baktha Sironmani

For Respondents : Ms.Amrita Dinakaran
Government Advocate



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ORDER

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The writ petition was filed challenging the orders of assessment dated 03.03.2021. The question that was raised during the course of assessment initially related to the rate of tax on the sale of Polyurethane Foams.

2. It was submitted by the learned counsel for the petitioner that the Commissioner issued a clarification vide ACAAR No.15 / 2012-13 dated 02.12.2014 stating that Polyurethane Foam is plastic good falling under Entry 13 of Part-C of First Schedule of the Tamil Nadu Value Added Tax, 2006 (hereinafter referred to as "TNVAT Act") liable to tax at 14.5% by virtue of Notification No.II(1)/CTR/12(R-20)/2011 in G.O.Ms.No.78, Commercial Taxes and Registration (B2) Department dated 11.07.2011 reduce the rate of tax at 5% on Polyurethane Foam w.e.f. 12.07.2011. The relevant portion of the order reads as under:

"9...

The Polyurethane Foam is a plastic good, liable to tax at reduced rate of 5%, as per Entry in Sl.No.13 in the list of goods, which are normally taxable at 14.5% under Part-C of First Schedule, under Notification No.II(1)/CTR/12(R-20)/2011 in G.O.Ms.No.78, Commercial Taxes and Registration (B2) Department dated 11.07.2011, brought into effect from 12.07.2011."



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2.1. It is submitted by the learned counsel for the petitioner that any levy of tax at 14.5% would be contrary to the clarification which is binding on the assessing officer.

3. To the contrary, it was submitted by the learned counsel for the respondents that though the rate of tax may be 5%, the impugned orders of assessment only proceeded on the premise that the petitioner collected tax at 14.5% on the sale of Polyurethane Foam and had not remitted the tax so collected and thus the impugned order was passed invoking Section 40(1) of the TNVAT Act which provides that no registered dealer shall make any such collection except in accordance with the provisions of this Act and the Rules made thereunder. It was submitted by the learned counsel for the Respondents that no evidence is available nor submitted by the petitioner to show that the excess tax collected was remitted to the State. Further, the learned counsel for the respondents submitted that this is the third round of litigation.

4. The learned counsel for the petitioner submitted that they have



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copies of invoice/documents to show that they have not collected tax at 14.5% and instead collected tax at 5% and the impugned order is contrary to facts and thus unsustainable.

5. Whether tax was collected at 14.5% or 5% and remitted with the State treasury is essentially a question of fact to be proved on the basis of evidence and thus the appropriate remedy would only be before the Appellate Authority.

6. 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 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.”

(emphasis supplied)

7. There can be no doubt that even though the High Court can entertain a Writ Petition against any order or direction passed / action taken by the State and / or its authorities under Article 226 of the Constitution of India, it ought not to do so as a matter of course when the aggrieved person



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could have availed of an effective alternative remedy in the manner prescribed by law.¹

8. The learned counsel for the petitioner made a request seeking liberty to file an appeal. In view of the same, the writ petition is dismissed, liberty is granted to the petitioner to file an appeal within a period of 3 weeks from the date of receipt of a copy of this order. If appeal is filed within 3 weeks from the date of receipt of a copy of this order, the Appellate Tribunal shall admit the appeal without reference to limitation subject to the compliance with other condition governing appeal. Registry is directed to return the original copy of the impugned order to enable the petitioner to file its appeal after retaining a photocopy of the impugned order. No costs. Consequently, the connected miscellaneous petitions are closed.

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Speaking (or) Non Speaking Order

Index:Yes/No

Neutral Citation: 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]



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To:
The Commercial Tax Officer,
Thiruvallikeni Assessment Circle,
Chennai.



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MOHAMMED SHAFFIQ, J.

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