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W.P.Nos.14334 & 14341 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.08.2023

PRONOUNCED ON : 10.10.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.14334 & 14341 of 2020
and WMP.Nos.17801, 17803, 17808 & 17810 of 2020

M.K.N.Coconut Industries
Rep.by its Prop.Vinoth Soudhararajan

.. Petitioner in
both W.Ps.

Vs.

The State Tax Officer (Intelligence)
(Adjudication-1 wing)
Office of the Joint Commissioner of ST
Salem.

... Respondent in
both W.Ps.

Prayer in W.P.No.14334 of 2020 :Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records connected with GST INS Regr.Sl.No.1/2019-20 dated 15.10.2019 for the assessment year 2018-2019 issued by the respondent and to quash the same for having been passed without authority of law and in gross violation to the principles of natural justice .



W.P.Nos.14334 & 14341 of 2020

Prayer in W.P.No.14341 of 2020 :Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records connected with GST INS Regr.Sl.No.1/2019-20 dated 15.10.2019 for the assessment year September 2017- March 2018 issued by the respondent and to quash the same for having been passed without authority of law and in gross violation to the principles of natural justice .

In both cases

For Petitioner : Mr.N.Viswanathan

For Respondent : Mrs.K.Vasanthamala
Government Advocate.

COMMON ORDER

By this common order, both these writ petitions are being disposed of.

2. In these writ petitions, the petitioner has challenged the respective orders passed by the respondent, State Tax Officer (Intelligence) both dated 15.10.2019 in GST INS Regr.Sl.No.1/2019-20 for the Assessment Years 2017-18 [December 2017 to March 2018] and for the Assessment Year [2018-19 April 2018 to March 2019].



W.P.Nos.14334 & 14341 of 2020

WEB COPY

3. The impugned orders have been passed by the respondent under Section 62 of the TNGST, Act, 2017 in Form GST ASMT-13. Details of demand confirmed vide impugned orders together with interest due from the petitioner are as hereunder :-

W.P.No.	Assessment Year	IGST	CGST	SGST	Total Due	ITC as per GSTR-2A
14334/20	2017-2018	27,70,722	37,498	37,498	28,45,718	7,53,528
14341/20	2018-2019	51,89,395	9,73,143	9,73,143	71,35,681	23,46,116

After adjustment of ITC as per GSTR-2A

Assessment year	NET IGST Due	NET CGST Due	NET SGST Due	Balance Tax Due	Interest
2017-2018	2,17,194*	37,498	37,498	20,92,190	6,08,646
2018-2019	37,86,850**	7,21,382	7,21,382	52,29,614	9,71,107
Total	58,04,044	7,58,880	7,58,880	73,21,804	15,79,753

Note:-

* Rs.20,17,194/- = Rs. 27,70,722 - Rs.7,53,528



W.P.Nos.14334 & 14341 of 2020

**** Rs.37,86,850/- = Rs.51,89,395 - Rs.14,02,545**

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Note

- i. **Rs.5,03,522/-** [Rs.2,51,761+ Rs. 2,51,761] out of Rs.23,46,116/- available as in ITC in GSTR-2A was set-off against tax liability of Rs.9,73,143/- and Rs.9,73,143/- each against SGST and CGST tax liability.
- ii. Thus, leaving balance of Rs.18,42,594/- [Rs.23,46,116-5,03,522].
- iii. Rs.14,02,545/- alone out of Rs.18,42,594/- was set-off against IGST tax liability of Rs.51,89,395/- leaving balance amount of Rs.4,40,049/-.

4. The petitioner, is a manufacturer of dessicated coconut (coconut copra) from Kancheepuram. The petitioner was registered as a dealer under Tamil Nadu Shops and Establishments Act,1947 and Tamil Nadu VAT Act,2006. The petitioner later obtained registration under the respective GST enactment and started filing returns in GSTR-1 under Rule 59(1) of the Rules and GSTR-3B under Rule 61(5) of the Rules till November 2017.



W.P.Nos.14334 & 14341 of 2020

WEB COPY

5. However, the petitioner failed to pay tax on the outward supplies made by the petitioner due to alleged set back in business as the petitioner's customers had allegedly defaulted in making payments to the petitioner. The petitioner therefore failed to file regular returns thereafter. The petitioner continued however to upload GSTR-1 Returns under Rule 59(1) without filing GSTR-3B under Rule 61(5) of the Rules.

6. It is case of the petitioner that the petitioner had closed on the business from April 2019 and later had wound up business due to out break of Covid-19 pandemic.

The facts on records indicate that an inspection was carried at the petitioner's premises on 28.05.2019 by the Deputy State Tax Officer, Enforcement Group-V, Salem along with the State Tax Officer, Enforcement Group-V, Salem. Statements were obtained from the petitioner on 28.05.2019. The petitioner admitted to tax liability and also agreed to pay the arrears of tax for the period from July 2017 to March 2019.



W.P.Nos.14334 & 14341 of 2020

WEB COPY

8. On 17.06.2019, the petitioner was issued with a notice by the respondent referring to the inspection carried on 28.05.2019 and was informed that the petitioner had still not filed Returns in Form GSTR-3B from July 2017 to March 2019 and filed only monthly Returns in Form GSTR-1 by quantifying the taxes payable under the various heads. Since the petitioner failed to file Returns in Form GSTR 3B. the petitioner was informed that proceedings will be initiated against the petitioner.

9. Thereafter, Notice dated 01.07.2019 under Section 46 of the TNGST Act, 2017 was issued to the petitioner. The petitioner was called upon to file returns in GSTR-3B for the period between from September 2017 to March 2018 within a period of 15 days from the date of receipt of the aforesaid notice, failing which, the petitioner was informed that action under Section 62 of the Act would be initiated against the petitioner.



W.P.Nos.14334 & 14341 of 2020

WEB COPY

10. Later, the petitioner was issued with another notice dated 23.07.2019 fixing personal hearing citing the earlier demanded notice dated 01.07.2019. A further demand was made for the composite period between April 2018 and March 2019 by including tax liability to the petitioner for the period from April 2018 to March 2019.

11. The petitioner however did not comply with the requirements as the petitioner claimed that he had no money. The petitioner merely asked for further time for filing returns. Meanwhile, the petitioner sent a request for further time to pay tax and file returns pursuant to notice issued on 01.07.2019 under Section 46 of the TNGST Act, 2011 r/w 100 TNGST Rules, 2017. However, the petitioner still failed to pay either the tax or file the returns. Thus, the impugned orders came to be passed on 15.10.2019.

12. During the course of arguments, the learned counsel for the petitioner submitted that the petitioner was unable to upload Form-GSTR-3B as the petitioner was unable to avail file input tax credit on purchases made. It is further submitted that without allowing the



W.P.Nos.14334 & 14341 of 2020

WEB COPY

petitioner to avail the proportionate credit on inward supplies, the petitioner cannot be mulcted with tax liability. It is therefore submitted that the Impugned Orders are liable to be quashed.

13. Defending the Impugned Assessment Orders, the learned Additional Government Pleader (Puducherry) for the respondent submits that the writ petitions are devoid of merits and are liable to be dismissed.

14. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

15. The impugned orders have been passed on 15.10.2019. The limitation for filing the appeal expired long before the writ petition was filed on 17.09.2020. The reasons given in the affidavit filed in support of the present writ petitions and the arguments advanced by the learned counsel for the petitioner during hearing are in variance with each other.



W.P.Nos.14334 & 14341 of 2020

WEB COPY

16. The Hon'ble Supreme Court in **Assistant Commissioner (CT) LTU, Kakinada and others Vs. Glaxo Smith Kline Consumer Health Care Limited**, (2020) 19 SCC 681, 2020 SCC Online SC 440. has held that High Courts cannot entertain the writ petition against assessment orders beyond the period of statutory period.

17. As per the decision of the Hon'ble Supreme Court in **Glaxo Smith Kline Consumer Health Care Limited** case (referred to supra), a writ petition beyond the statutory period of limitation is not maintainable and is liable to be dismissed. Relevant portion from the said decision reads as under:-

"14. In the backdrop of these facts, the central question is: whether the High Court ought to have entertained the writ petition filed by the respondent? As regards the power of the High Court to issue directions, orders or writs in exercise of its jurisdiction under [Article 226](#) of the Constitution of India, the same is no more res integra. 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.



WEB COPY



W.P.Nos.14334 & 14341 of 2020

could have availed of an effective alternative remedy in the manner prescribed by law (see [Baburam Prakash Chandra Maheshwari vs. Antarim Zila Parishad](#) [Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad, AIR 1969 SC 556] and also [Nivedita Sharma v. COAI](#), (2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947]). In [Thansingh Nathmal v. Supt. of Taxes](#), AIR 1964 SC 1419], **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 paragraph 7, the Court observed thus:- (Thansingh Nathmal case [Thansingh Nathmal v. Supt. of Taxes, AIR 1964 SC 1419], AIR p. 1423)**

“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



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W.P.Nos.14334 & 14341 of 2020

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.”

18. A priori, we have no hesitation in taking the view that what this Court cannot do in exercise of its plenary powers under [Article 142](#) of the Constitution, it is unfathomable as to how the High Court can take a different approach in the matter in 18 (2016) 1 SCC 315 reference to [Article 226](#) of the Constitution. The principle underlying the rejection of such argument by this Court would apply on all fours to the exercise of power by the High Court under [Article 226](#) of the Constitution.



WEB COPY



W.P.Nos.14334 & 14341 of 2020

19. We may now revert to the Full Bench decision of the Andhra Pradesh High Court in Electronics Corpn. of India Ltd. [Electronics Corpn. of India Ltd. v. Union of India, 2018 SCC Online Hyd 21 : (2018) 361 ELT 22], which had adopted the view taken by the Full Bench of the Gujarat High Court in Panoli Intermediate (India) (P) Ltd. v. Union of India [Panoli Intermediate (India) (P) Ltd. v. Union of India, 2015 SCC Online Guj 570 : AIR 2015 Guj 97] and also of the Karnataka High Court in Phoenix Plasts Co. v. CCE [Phoenix Plasts Co. v. CCE, 2013 SCC Online Kar 10432 : (2013) 298 ELT 481]. The logic applied in these decisions proceeds on fallacious premise. For, these decisions are premised on the logic that provision such as [Section 31](#) of the 2005 Act, cannot curtail the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. This approach is faulty. It is not a matter of taking away the jurisdiction of the High Court. In a given case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction - by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner choses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under [Section 31](#) of the 2005 Act, the High Court cannot disregard the statutory



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W.P.Nos.14334 & 14341 of 2020

period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three-Judge Bench of this Court in ONGC [ONGC v. Gujarat Energy Transmission Corpn. Ltd., (2017) 5 SCC 42 : (2017) 3 SCC (Civ) 47]. In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose."

18. Since these writ petitions have been filed beyond the statutory period of limitation prescribed under Section 107 of the Respective GST Act Enactment of 2017 for filing statutory appeal they are liable to be dismissed.

19. The petitioner filed returns in form GSTR-1 under Rule 59(1) of Tamil Nadu Goods And Services Tax Rules, 2017 for the supplies affected by the petitioner. The petitioner however failed to file returns in form GSTR-3B. The petitioner has admitted to tax liability and failed to file returns in form GSTR-3B.



W.P.Nos.14334 & 14341 of 2020

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20. The petitioner was issued with a notice dated 17.06.2019 whereby the petitioner was called upon to file returns in form GSTR-3B for the period between July 2017 to March 2019 and to pay the tax dues. The petitioner has partly discharged the tax liability for the month of July 2017 and August 2018.

21. Thereafter, another notice dated 01.07.2019 under Section 46 of the TNGST Act, 2017 was issued to the petitioner, whereby the petitioner was called upon to file returns for the period from September 2017 to March 2018.

22. Thereafter, the petitioner was issued with another notice for personal hearing dated 23.07.2019 citing the earlier demanded notice dated 01.07.2019. A further demand was made for the composite period by including tax liability to the petitioner for the period from April 2018 to March 2019. However, there was no satisfactory response to the same from the petitioner.

23. The petitioner was required to file Annual Return under



W.P.Nos.14334 & 14341 of 2020

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Section 44 of the TNGST Act, 2017 and Final Return under Section 45 of TNGST Act , 2017.

24. The petitioner has filed returns and paid tax dues for the month from September 2017 to November 2017 alone. Therefore, the Assessing Officer passed the impugned orders both dated 15.10.2019 and assessed the tax liability of the petitioner under Section 62 of the TNGST Act 2017 to the best of his judgment based on the materials gathered during the inspection and available with the department.

25. Reading of the impugned orders also indicates that the tax liability determined is the net liability after adjustment of ITC in GSTR-2A. Therefore, even on this count there is no case made out for interfering with the Impugned Assessment Orders.

26. If the petitioner had furnished a valid return within thirty days of the service of the aforesaid assessment orders under sub-section (1) of section 62 of the Act, the said assessment orders would have been



W.P.Nos.14334 & 14341 of 2020

WEB COPY

deemed to have been withdrawn under sub-section (2) of Section 62 of the Act but the liability for payment of interest under Sub-section (1) of Section 50 or for payment of late fee under Section 47 was to continue. Thus, there is no scope for interfering with the impugned orders.

27. Therefore, these writ petitions are liable to be dismissed. However, liberty is given to the petitioner to seek time from the respondent for discharging the tax liability in installments which shall be considered.

28. These writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

10.10.2023

Index : Yes/No

Neutral Citation: Yes/No

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W.P.Nos.14334 & 14341 of 2020

To

The State Tax Officer (Intelligence)
(Adjudication-1 wing)
Office of the Joint Commissioner of ST
Salem.



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W.P.Nos.14334 & 14341 of 2020

C.SARAVANAN,J.
kkd

Pre-delivery Common Order in
W.P.Nos.14334 & 14341 of 2020

10.10.2023