



W.P.No.20994 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2023

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

W.P.No.20994 of 2023
and
W.M.P.Nos.20367 & 20369 of 2023

M/s.S.R.Stamping Components

... Petitioner

Vs

The Commercial Tax Officer,
Sriperumbudur Assessment Circle,
Varadarajapuram 602 103.
Kancheepuram District.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records of the respondent in its proceedings in TIN/33411669721/2015-2016, quash the order dated 27.12.2021.

For Petitioner : Mr.P.V.Sudakar

For Respondent : Mrs.E.Renganayagi
Special Government Pleader



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ORDER

The petitioner has challenged the Impugned Assessment Order dated 27.12.2021 bearing reference: TIN/33411669721/2015-2016.

2. The case of the petitioner is that the petitioner has not received the Impugned Assessment Order dated 27.12.2021 and that the petitioner came to know that the Impugned Assessment Order had been passed only after the Recovery Notice was served on the petitioner on 07.06.2023.

3. Per contra, the learned Special Government Pleader for the respondent would submit that the dispute pertains to the Assessment Year 2015-2016. The petitioner was issued with the notice dated 21.01.2018 to which a reply was to be filed by the petitioner by 07.02.2018. However, the petitioner failed to file a reply. Thereafter, a second notice was issued to the petitioner on 18.10.2021, whereon the petitioner was called upon to come for “Personal hearing” within fifteen (15) days time. Despite receipt of the same, the petitioner neglected and failed to appear. Therefore, based on the available records the demand proposed in the notice was confirmed by the respondent on 27.12.2021.

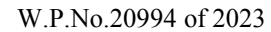


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4. It is submitted that the present writ petition is not maintainable in the light of the decision of the Hon'ble Supreme Court in the case of **Assistant Commissioner (CT) LTU, Kakinada and others Vs. Glaxo Smith Kline Consumer Health Care Limited**, (2020) 19 SCC 681, 2020 SCC Online SC 440, wherein in Paragraphs 14, 18 and 19, it has been held as follows:-

"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 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:-



“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 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



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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.

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 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."



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5. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Special Government Pleader for the respondent.

6. There is no merits in the present writ petition in the light of the decision of the Hon'ble Supreme Court in **Assistant Commissioner (CT) versus Glaxo Smith Kline Consumer Health Care Product** (2020) 19 SCC 681. Therefore, this writ petition is liable to be dismissed.

7. At this stage, the learned counsel for the petitioner seeks liberty to approach the respondent and submits that the petitioner will pre-deposit the disputed tax. It is prayed that that the petitioner be given one last opportunity to explain the case on merits. The above undertaking of the learned counsel for the petitioner stands recorded.

8. The Impugned Order is therefore set aside and the case is remitted back to the respondent considering the fact that the Impugned Order was passed without the petitioner participating in the proceedings and in view of the above undertaking of the learned counsel for the



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petitioner.

9. The Petitioner shall deposit the disputed tax within a period of six (6) weeks from date of receipt of this order. Subject to the petitioner pre-depositing the disputed tax within such time, the respondent shall take up the case and dispose the same on merits and in accordance with law within a period of four (4) weeks thereafter. Petitioner is given liberty to file a reply within such time.

10. Needless to state, petitioner shall also be heard before fresh orders are passed in the *de novo* proceedings. The amount to be pre-deposited will be appropriated or refunded or adjusted subject to the final outcome of the *de novo* proceedings.

11. It is made clear that if the petitioner fails to pre-deposit the amount within the time stipulated above, this order shall stand revoked *sine die* with liberty to the respondent to proceed against the respondent to initiate recovery proceeding.



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12. The Writ petition stands allowed with the above observations and directions. No cost. Consequently, connected miscellaneous petitions are closed.

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Neutral Citation: Yes/No
Speaking/Non-Speaking Order
rgm

To

The Commercial Tax Officer,
Sriperumbudur Assessment Circle,
Varadarajapuram 602 103.
Kancheepuram District.



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C.SARAVANAN, J.

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