IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2023

CORAM

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

W.P.No.278 of 2020
and
W.M.P.Nos.324 & 327 of 2020

M/s.MSR Polymer and Paper Cups,
Represented by its Proprietor,
R.Janaki ... Petitioner

Vs

1. The Commissioner (CT),
   Commercial Taxes Department,
   Puducherry.

2. The Deputy Commercial Tax Officer, IAC,
   Commercial Taxes Department,
   Puducherry. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari , to call for the records on the file of the second respondent herein in VAT Assessment Order No: TIN 34730012817/2017-18 (April 17 to June 17) dated 14.09.2018 and quash the same.

For Petitioner : Mr.P.Suresh
For Respondents : Mr.V.Vasantha Kumar
Additional Government Pleader
(Pondicherry)

ORDER

The petitioner has challenged the Impugned Assessment Order dated 14.09.2018 bearing reference VAT.No.34730012817/2017-18 for the period 2017-2018 (April 2017 to June 2017).

2. Earlier the petitioner had filed W.P.No.26802 of 2019 wherein challenging the Garnishee Order was challenged. By an order dated 10.09.2022, this Court dismissed the writ petition. However, liberty was given to the petitioner to challenge the Assessment Order dated 14.09.2018 in the manner known to law.

3. It is under these circumstances the petitioner has filed the present writ petition challenging the Impugned Assessment Order dated 14.09.2018 bearing reference VAT.No.34730012817/2017-18 for the period 2017-2018 (April 2017 to June 2017) under the Puducherry Value

Added Tax Act, 2007.

4. The learned counsel for the petitioner submits that the Impugned Assessment Order precedes a Show Cause Notice dated 28.02.2018 by the second respondent which was in turn was based on an inspection on 10.02.2018 by the Department in presence of the Commercial Tax Officer and the Assistant Commissioner.

5. Specifically it is submitted that the inspection was contrary to authorization under Section 67(1) of the CGST Act, 2017.

6. In support of the present writ petition, the learned counsel for the petitioner has placed reliance on the following cases:-

i. ***Prakashsinh Hathisinh Udavat*** *vs.* ***State of Gujarat,*** *Special Civil Application No.15365 of 2019;*

ii. ***ACIT, Circle-1(2), Bhubaneswar*** *vs.* ***M/s.Serajuddin and Company, Kolkata****, I.T.A.No.39 of 2022 and etc.*

7. That apart it is submitted that at the time when the notice was issued to the petitioner, which is a proprietary concern, the deponent was hospitalized and therefore could not respond to the proceedings initiated under the provisions of the Puducherry Value Added Tax Act, 2007.

8. Defending the Impugned Assessment Order, the learned Additional Government Pleader (Puducherry) for the respondents submits that the writ petition is devoid of merits and is liable to be dismissed.

9. It is submitted that the submission that there was no authorization is contrary to the facts and without any legal basis as indeed there was an authorization by the Commissioner of State Tax on 09.02.2018. The inspection was carried out on the following date on 10.02.2018. Therefore, on this score, the decisions cited by the learned counsel for the petitioner are inapplicable.

10. It is further submitted that though the Impugned Assessment Order is dated 14.09.2018, the present writ petition was filed only on

17.12.2019 long after the expiry of limitation for filing an appeal before the Appellate Authority under the provisions of the Puducherry Value Added Tax Act, 2007.

11. That apart, it is submitted that no reply was given to the notice dated 28.08.2018 and therefore Impugned Order was passed. Hence prays for dismissal of the present writ petition.

12. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader (Puducherry).

13. The petitioner had authorized his accountant to produce all documents that were required before the authorities during inspection. The information gathered during inspection on 10.02.2018 cannot be said to be without any authority of law in as much as there was a prior authorization by the Commissioner of the State Tax on 09.02.2018 authorizing inspection.

14. The petitioner having failed to respond to the notice cannot

challenge the impugned order either before the Appellate Commissioner after limitation or before this Court long after the limitation. Before the Appellate Authority the appeal would be time barred and before this Court, the writ petition is liable to be dismissed on account of latches.

15. That apart, the Hon'ble Supreme Court recently 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 writ petition against assessment orders beyond the period of statutory period.

16. 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 liable to be dismissed.

17. 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 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 Maheswari 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 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.

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."

18. Therefore, there is no case made out for interfering with the Impugned Assessment Order.

19. Under these circumstances, the writ petition stands dismissed. No cost. Consequently, connected miscellaneous petitions are closed.

09.08.2023

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

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To

1. The Commissioner (CT),
   Commercial Taxes Department,
   Puducherry.

2. The Deputy Commercial Tax Officer, IAC,
   Commercial Taxes Department,
   Puducherry.

C.SARAVANAN, J.

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