BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.01.2023

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. (MD) No. 30 of 2023
and
W.M.P. (MD) No. 45 of 2023

M/s.Kotti Ayyanar Traders,
Rep. By its Proprietor,
P.Rajasekaran ... Petitioner

Vs.

1.The State Tax Officer (ST)-I.
Virudhunagar-1 Assessment Circle,
Virudhunagar.

2.The Principal Secretary /
Commissioner of Commercial Taxes,
Chepauk, Chennai – 5. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the constitution of India, to issue a Writ of Certiorari, to call for the records in pursuance to the 1st respondent's Impugned order vide TIN.33705722076/2016-17 dated 23.09.2022 and quash the same as devoid on merits.

For Petitioner : Mr. S.Selvakumar

For Respondents : Mr. D.Gandhiraj
Special Government Pleader

ORDER

Heard Mr. S.Selvakumar, Learned Counsel for the Petitioner, Mr. D.Gandhiraj, Learned Special Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Respondent passed the Order No. TIN.33705722076/2016-17 dated 23.09.2022 for the assessment year 2016-2017 under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the 'TNVAT Act' for short) in respect of the Petitioner, who has received the copy of that order on 22.11.2022 through his authorized agent. The Petitioner was entitled to prefer appeal against that order under Section 51 of TNVAT Act, within a period of 30 days from the date of its receipt before the Appellate Authority, who has been empowered to condone delay in filing such appeal for an extended

period of 30 days, if sufficient cause for not preferring appeal within that period is made out. However, the Petitioner did not prefer any such appeal before that Appellate Authority, but has instead filed this Writ Petition on 02.01.2023 challenging the order passed by the Respondent.

3. There is no acceptable explanation from the Petitioner for not having resorted to that alternative remedy provided under the statute. In this context, it must be recapitulated here that the Hon'ble Supreme Court of India in ***Assistant Collector of Central Excise -vs- Dunlop India Limited*** [(1985) 1 SCC 260] has succinctly explained the legal position relating to the exercise of discretionary powers under writ jurisdiction as follows:-

> *"3. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be*

had to Article226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

When the same was pointed out to Learned Counsel for the Petitioner, he seeks permission of the Court to withdraw the Writ Petition with liberty to resort to the aforesaid procedure. He has also made an endorsement to that effect in the court record.

4. In the result, the Writ Petition is dismissed as withdrawn granting such liberty. It is made clear for the purpose of reckoning limitation for availing the aforesaid remedy, the period from the date of filing of the Writ Petitions,

viz., 02.01.2023, till the date on which the certified copy of this order is made ready by the Registry, shall be excluded. Consequently, connected Miscellaneous Petitions are closed. No costs.

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NCC : Yes/No
Index : Yes/No

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Note: (i) Issue order copy by 30.01.2023.

(ii) Registry is directed to return the original copy of the impugned orders under written acknowledgment after retaining a copy of the same for record.

TO:

1.The State Tax Officer (ST)-I.
Virudhunagar-1 Assessment Circle,
Virudhunagar.

2.The Principal Secretary /
Commissioner of Commercial Taxes,
Chepauk, Chennai – 5.

P.D.AUDIKESAVALU,J.

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