IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2024

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

AND

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A. No.1244 of 2022

and C.M.P. No.7662 of 2022

TVL. Gemini Edibles & Fats India (P) Ltd.,
Rep. By Mr.D.C.Thiyagarajan, Authorized Signatory,
New No.6, Old No.12/1, Bazar Lane,
Mylapore, Chennai – 4. ...Appellant

-vs-

The Assistant Commissioner (ST)
Loan Square Assessment Circle,
Chennai – 6. …Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent praying to set aside the order passed in W.P.No.6103 of 2022 dated 04.04.2022.

For Appellant : Mr.S.N.Kirubanandam

For Respondent : Mr.M.Venkateswaran
Special Government Pleader

JUDGMENT

Heard both sides and perused the records.

2. The present Writ Appeal is filed challenging the order of the learned Judge insofar it has dismissed the writ petition on the ground of existence of alternative remedy by way of an appeal.

3. The appellant / writ petitioner is a private limited company registered under the Tamil Nadu Value Added Tax Act, 2006. They had filed their monthly returns for the assessment year 2014-15. While so, the appellant's place of business was inspected by the enforcement wing officials and the following defects were noticed:

i) Verification of sales details of the dealers with other end dealers Annexure I through intranet website allegedly revealed that some of the transactions did not match.

ii) Verification of the purchase details of the writ petitioner with the other end dealers Annexure II, allegedly revealed that certain purchases were not accounted for.

iii) Verification of ICE Gate data allegedly revealed that the writ petitioner had imported goods through Chennai Port, however, the same has not been reported in the monthly returns.

iv) Verification of check post movement from the intranet website allegedly revealed that certain consignee movements were not accounted for as purchase suppression / omission.

4. On the basis of the defects noticed during the course of inspection, a show cause notice dated 14.07.2021 was issued proposing to treat Defect No.1 as sales suppression while Defect Nos.2, 3 and 4 were proposed to be treated as purchase suppression / omission.

5. In response to the above notice, the appellant filed their reply and explained the discrepancy *vide* letter dated 09.08.2021. On considering the above objection, the sales suppression in view of Defect No.1 which was proposed to the extent of Rs.33,58,08,050/- was modified and reduced to Rs.5,93,552/-. However, with regard to Defect Nos.2, 3 and 4, the proposal was confirmed on the premise that the appellant had not produced supportive documents in the form of ledger, purchase ledger, Form F, etc. It is against this order of assessment that the appellant preferred a writ petition, which stood rejected by the learned judge on the premise that there is no reason for entertaining the writ petition and the writ petitioner ought to have availed alternative remedy by way of appeal. Aggrieved by the order of the learned Judge, the appellant / writ petitioner is before this Court by way of the present writ appeal.

6. The learned counsel for the appellant assailed the order impugned herein *inter alia* on the premise that the request for a cross-examination of other end dealers has not been acceded to. A reading of the order of assessment does not disclose / show that the appellant requested for any opportunity to cross-examine any party. The copy of the objection stated to have been filed by the appellant, was not part of the typed set of papers. In any view, the learned counsel for the Respondent would submit that the impugned order of assessment requires examination of disputed facts and thus, the order of the learned Judge dismissing the writ petition on the ground of existence of alternative remedy, does not warrant interference by this court.

7. In these circumstances, we find that the order of the learned judge dismissing the writ petition on the ground that there has been no violation of principles of natural justice, does not warrant any interference, for, as rightly pointed out by the learned Judge, the grounds of challenge to the impugned order of assessment give rise to examining disputed questions of facts, which are alien to jurisdiction of this Court under Article 226 of the Constitution of India.

8. The learned counsel for the appellant during the course of argument, submitted that the appellant had paid 25% of disputed taxes. Therefore, the appellant is granted liberty to file an appeal within a period of four (4) weeks from the date of receipt of copy of this judgment. If any appeal is filed within the period stipulated viz., 4 weeks from the date of receipt of copy of this judgment, the appellate authority shall entertain the same, without reference to limitation, however subject to the appellant complying with other conditions relating to pre-deposit, if any, etc. The appellate authority shall also take into account the taxes deposited against interim orders of this Court, while calculating the pre-deposit and dispose of the appeal, on merits and in accordance with law, after affording the appellant a reasonable opportunity of hearing, as expeditiously as possible.

9. This writ appeal stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]
01.04.2024

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
Spp

R.MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

Spp

To
The Assistant Commissioner (ST)
Loan Square Assessment Circle,
Chennai – 6.

W.A. No.1244 of 2022

01.04.2024