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W.A.No.1742 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2024

CORAM :

THE HON'BLE MR.R. MAHADEVAN,THE ACTING CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.A. No.1742 of 2024

and C.M.P.Nos.12275 and 12276 of 2024

M/s.V.N.V.Builders Pvt. Ltd.,
Rep.by its Managing Director,
Mr.V.N.Varadharajan
No.149, Kalaramani Moduchur Village,
Gobichettipalayam, Erode-638 476.

... Appellant

Vs.

1.State Tax Officer, Gobichettipalayam,
Assistant Commissioner (State Tax Officer),
Gobichettipalayam- 638 452.

2.Salem Smart City Limited,
Salem City Corporation Building,
Salem- 636 001.

3.Assistant Commissioner (Accounts).
Corporation of Salem, Salem.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent praying to set aside the order of this Court in W.P.No.14453 of 2024 dated 03.06.2024.



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For Appellant : Ms.Kanmani Annamalai
for Mr.K.V.Subramanian Associates

For Respondents : Mr.Prashanth Kiran
Government Advocate

JUDGMENT

(Judgment of the Court was made by Mohammed Shaffiq, J.)

The present writ appeal is filed challenging the order of the learned Single Judge in W.P.No.14453 of 2024 dated 03.06.2024 insofar as it has denied the discretionary relief under Article 226 of the Constitution on the premise that the appellant has filed the writ petition challenging the order dated 09.01.2019 only on 24.05.2024 i.e., almost 5 years after the impugned order came to be passed.

2. It is submitted by the learned counsel for the appellant that the order dated 09.01.2019 was challenged primarily on the ground that the same was not communicated to the appellant through any mode including uploading on the GST portal. The appellant was served with the garnishee notice on 15.05.2024 and it was only thereafter that the appellant requested the 1st Respondent to furnish a certified copy of the impugned order. It was submitted that there has been a gross violation of the procedure as provided



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under the GST Act and Rules inasmuch as GST DRC-01A, GST DRC-01 nor GST DRC-07, GST DRC-07A was served on the appellant. It was thus submitted that the entire proceeding is bad in law and offends Article 265 of the Constitution apart from being in violation of principles of natural justice.

3. To the contrary, the learned Government Advocate for the Respondents reiterated his submission made before the learned Single Judge while pointing out that the appellant was served with a recovery notice dated 26.11.2020 which contained reference of the order dated 09.01.2019 and thus the appellant was aware of the impugned order even as early as 26.11.2020 and they ought to have taken steps to obtain a copy of the order dated 09.01.2019 at the earliest on becoming aware of the same. The appellant had not taken any steps except to submit a letter dated 28.12.2020 wherein it was stated that refund was due to the appellant under the TNVAT Act and that they are entitled to adjust the same towards the GST liability. It was submitted that the appellant thus had knowledge of the order and having failed to take appropriate steps for challenging the order dated 09.01.2019, the order of the learned Single Judge does not warrant interference.

4. Heard both sides. Perused the materials on record.



5. The question that arises for consideration herein is whether there was a valid service of the notice and the impugned order as contemplated under the GST Act and the Rules. It is trite law that service of notice or order is essentially a question of fact¹. It is equally true that valid service of notice or order goes to the root of jurisdiction². It is also relevant to note that knowledge of a proceeding cannot be a substitute for service³.

6. In view of the above, we are not inclined to examine the above question of fact and we leave it open to the appellant to approach the appellate authority who is the appropriate authority to examine the above question as to whether there is a valid service of notice or order. In this regard, it may be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of *Gita Devi Aggarwal vs. Commissioner of IT reported in (1970) 76 ITR 496 (SC)*, wherein it was held as under:

“The first question that arises in this appeal is whether the appellant is entitled to invoke the special jurisdiction of the High Court under Article 226 of the Constitution. Under Section 33B, Sub-section (3), of the Act, a right of appeal was available to the appellant and would have been more appropriate, because questions of fact regarding the service of the notice were involved and such questions

1. *Union of India v. Pramod Gupta*, (2005) 12 SCC 1 :

Niranjan Agarwalla v. Union of India, 1960 SCC OnLine Cal 111 :

2. *Gopal Oil Mills v. Assessing Authority, Ludhiana*, 1984 SCC OnLine P&H 837;

Jaipur Udyog Ltd. v. Commercial Taxes Officer, 1979 SCC OnLine Raj 231

Commissioner of Sales Tax, Maharashtra State, Bombay v. Shrimal Sakharchand, 1984 SCC OnLine Bom 446;

3. *Union of India v. Deepak Electric & Trading Co.*, (2012) 12 SCC 509



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could have been properly decided in the proceeding of the appeal. It is well-settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court for issue of a prerogative writ. It is true that the existence of an alternative remedy does not affect the jurisdiction of the court to issue a writ ; but, as observed by this Court in Rashid Ahmed v. Municipal Board Kairana [1950] S.C.R. 566, the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs and where such a remedy exists, it will be a sound exercise of discretion for the High Court to refuse to entertain a petition under Article 226 unless there are good grounds therefore.”

7. In the light of the above discussion, this writ appeal stands disposed of granting liberty to the appellant to file an appeal within a period of 4 weeks from the date of receipt of a copy of this judgment. If such appeal is filed subject to complying with conditions including pre-deposit the Appellate Authority shall examine the service of notice or order as a preliminary issue and thereafter proceed to decide the appeal on merits. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D., A.C.J.] [M.S.Q., J.]
04.07.2024

Index: Yes / No
Speaking order/ Non-speaking order
Neutral Citation: Yes / No
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THE ACTING CHIEF JUSTICE
and
MOHAMMED SHAFFIQ, J.

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To:

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Assistant Commissioner (State Tax Officer),
Gobichettipalayam- 638 452.
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