BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

and

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.A.(MD)No.1006 of 2024
and
C.M.P.(MD)No.7293 of 2024

M/s.John Buildwell India Pvt Ltd.,
Rep.by its Director M.Maria Antony,
S/o.S.Maria John,
No.10/1, Seevalaperi Road,
Palayamkottai-627 002,
Tirunelveli District. : Appellant

Vs.

The Joint Commissioner of Central GST,
and Central Excise,
No.7, Tractor Road, N.G.O. "A" Colony,
Tirunelveli-627 007. : Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent Act, to set aside the order dated 04.04.2024 passed in W.P. (MD) No. 8574 of 2024 on the file of this Court.

For Appellant : Mr.Raja.Karthikeyan

For Respondent : Mr.N.Dilipkumar
Standing Counsel

JUDGMENT

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[Judgment of the Court was delivered by **R.SURESH KUMAR, J.]**

This Writ Appeal has been directed against the order passed by the Writ Court, dated 04.04.2024 in W.P. (MD) No.8574 of 2024.

2.The assessment order was questioned before the writ Court. However, the learned Single Judge, through the impugned order dated 04.04.2024, has not entertained the writ petition, mainly on the ground that against the order of assessment, the assessee/dealer has an appeal remedy under Section 107 of the TNGST Act, 2017 r/w Rule 108 of TNGST Rules, 2017. By giving the said reason, in a short order dated 04.04.2024, the writ petition was dismissed.

3.However, Mr.Raja Karthikeyan, learned counsel for the appellant would submit that it is not a mere case, where the assessee/dealer has got an appeal remedy as against the order of assessment, but the very order of assessment itself passed by the assessing authority is without jurisdiction.

4.In this context, the learned counsel appearing for the appellant has brought to our notice the judgment passed by the writ

Court, of course by the same Hon'ble Judge made in ***W.P. No. 34792 of 2019 etc., batch, dated 11.03.2024*** in the matter of ***Tvl.Vardhan Infrastructure vs. The Special Secretary, Head of the GST Council Secretariat and others,*** wherein the Court has held as follows:

> *"64. Similarly, if an assessee has been assigned to the State Authorities, pursuant to the decision taken by the GST Council as notified by Circular No.01/2017 bearing Reference F.No.166/Cross Empowerment/GSTC/2017 dated 20.09.2017, the officers of the Central GST cannot interfere although they may have such intelligence regarding the alleged violation of the Acts and Rules by an assessee.*
>
> *65. The manner in which the provisions have been designed are to ensure that there is no cross interference by the counterparts. Only exception provided is under Section 6 of the respective GST enactement. Therefore, in absence of a notification for cross-empowerment, the action taken by the respondents are without jurisdiction. Officers under the State or Central Tax Administration as the case may be cannot usurp the power of investigation or adjudication of an assessee who is not assigned to them.*
>
> *66. Therefore, the proceedings initiated by the respondents so far against the respective petitioners by the Authorities other than the Authority to whom they have been assigned to are to be held as without jurisdiction. Therefore, the impugned proceedings warrants interference."*

5.By relying upon this decision, the learned counsel for the appellant would fairly submit that though this judgment has been rendered by the learned Judge, since it was not made available to the learned counsel for the appellant/writ petitioner, it has not been brought to the notice of the learned Judge.

6.The learned Standing Counsel appearing for the revenue authorities has raised a point that since the point of jurisdiction has not been raised before the writ Court, the learned Single Judge had no occasion to consider that aspect. Therefore, at this juncture, at the appellate stage, that point cannot be raised and on that ground, the order of assessment cannot be set aside.

7.We have considered the said rival submissions made by the learned counsel appearing on both sides and perused the materials placed before this Court.

8.Normally, when there has been a statutory appeal remedy provided, especially under the Tax Legislation, Writ Petition under Article 226 of the Constitution of India would not be entertained by this Court. But there are some exceptions for such procedure.

9.Insofar as the ground with regard to want of jurisdiction is concerned, if any order of assessment is assailed, that normally would be entertained by the writ Courts. Herein the case on hand, the main contention of the learned counsel for the writ petitioner/appellant is that for want of jurisdiction, since it has been assigned to the State Authorities, the Central GST Authorities has to lay off their hands and this position has been clearly reiterated by the learned Judge in the said Judgment in ***Tvl.Vardhan Infrastructure's*** case as stated supra.

10.Having gone through the said judgment, we do feel that the cross jurisdiction issue is a major factor, wherein the assessment order, if it is challenged on the ground of cross jurisdiction, certainly on that ground, the order of assessment can be interfered with. However, these factual issues since have not been brought to the notice of the learned Judge, when the writ petition was taken up for hearing, the learned Judge had no occasion to consider this aspect, except to go into the ground of appellate remedy, on which ground the learned Judge since has considered the matter, he was pleased to dismiss the same.

11.In the aforesaid circumstances, we are inclined to pass the following order:

> " The appellant/writ petitioner is at liberty to file a review application before the learned Single Judge, against the order impugned in this writ appeal dated 04.04.2024, wherein the judgment in ***Tvl.Vardhan Infrastructure's*** case and any other judgment with regard to the point of jurisdiction can be brought to the notice of the learned Single Judge, based on which arguments can be advanced for consideration of the writ Court."

12.With these observations, this writ appeal stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.S.K.,J.] & [G.A.M.,J.]
14.06.2024

Neutral Citation : Yes/No
Index : Yes/No
Internet : Yes/No
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Note: Issue order copy on 18.06.2024

To

The Joint Commissioner of Central GST,
and Central Excise,
No.7, Tractor Road, N.G.O. "A" Colony,
Tirunelveli-627 007.

R.SURESH KUMAR, J.

and

G.ARUL MURUGAN, J.

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ORDER MADE IN

W.A.(MD)No.1006 of 2024

14.06.2024