**(2007) 02 MAD CK 0249**

**In the Madras High Court**

**Case No :** Writ Petition No. 35337 of 2005

A.D.R. Plastics APPELLANT

Vs

The Commercial Tax Officer RESPONDENT

**Date of Decision :** 23-02-2007

**Acts Referred:**
Tamil Nadu General Sales Tax Act, 1959 — Section 12(3), 31, 36

**Citation :** (2008) 12 VST 438

**Hon'ble Judges :** K. Raviraja Pandian, J

**Bench :** Single Bench

**Advocate :** P. Radhakrishnan, for the Appellant; Haja Nazirudeen, Special Government Pleader, for the Respondent

## Judgement

K. Raviraja Pandian, J.—The petitioner filed OP praying to call for the records of the respondent in in TNGST/6230688/2001-2002 dated 25.08.2003 and set aside the same as illegal, arbitrary and violative of the principles of natural justice and violative of the provisions of the Explanation to Section 12(3) of the TNGST Act, 1959. That OP is converted to this writ petition on being transferred to the file of this Court.

2. Heard the learned Counsel and perused the materials available on record.

3. The assessment order is an appealable order. The assessee has an equally efficacious and alternative remedy by way of appeal to the authority prescribed u/s 31 of the Tamilnadu General Sales Tax, and a second appeal to the Tribunal u/s 36 of the Act.

4. The entrustment of the power to assess was not in dispute, and the authority within the limits of his power was a Tribunal of exclusive jurisdiction. The challenge was only to the regularity of the proceedings before the Sales Tax Officer as also his authority to treat the gross turnover returned by the petitioners to be the taxable turnover. Investment of authority to tax involves authority to tax transactions which in exercise of his authority the Taxing officer

regards as taxable and not merely authority to tax only those transactions which are, on a true view of the facts and the law, taxable.

5. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226. The Act provides for an adequate safeguard against an arbitrary or unjust assessment. The assessee has a right to prefer an appeal under the Act subject to its payment of admitted amount of tax as enjoined by the proviso to Section 31 of the Act and as regards the disputed amount of tax, it has a remedy of applying for stay of recovery during the pendency of the appeal under the said provision (See Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, .

6. In the light of what is stated above, this Court is of the view that the petitioner ought to have pursued its appellate remedy instead of filing the OP before the Tribunal, which is now numbered as this writ petition. However, as the petitioner in this case has been bona fidely agitating the matter before the Tribunal from 2003 and on abolition of the Tribunal before this Court since 2005, this Court is of the view that in order to sub-serve the ends of justice, one more opportunity has to be given to the petitioner to pursue the appellate remedy. Accordingly, the petitioner is permitted to file an appeal before the appellate authority, if so advised and two weeks'' time is granted for filing such an appeal against the orders of asseeessment, from the date of receipt of a copy of this order. The appellate authority shall entertain the appeal, if filed within the time given by this Court in this order.

7. The writ petition is disposed off in the above terms. No costs.

 