(2013) 03 MAD CK 0002

In the Madras High Court

Case No : Writ Petition No. 4488 of 2011 and M.P. No. 1 of 2011

Greenland Exports (P) Ltd. APPELLANT

Vs

Assistant Commissioner (CT) RESPONDENT

Date of Decision : 21-03-2013

Acts Referred:

Citation : (2013) 65 VST 69

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : Mallika Srinivasan, for the Appellant; Manoharan Sundaram, Government Advocate (Tax), for the Respondent

Judgement

V. Dhanapalan, J.—Heard Ms. Mallika Srinivasan, learned counsel for the petitioner and Mr. Manoharan Sundaram, learned Government

Advocate (Tax) appearing for the respondent. The petitioner-company calls in question the order of the respondent passed in Assessment No.

CST No. 582558, dated January 19, 2011 relating the assessment year 1996-97 on the file of the respondent, seeking to quash the same.

2. After hearing the learned counsel for the parties, it is seen that the main plea of the petitioner-company is that there was a delay in passing the

assessment order and therefore, even without moving the appellate authority as per the statute, the petitioner has filed the writ petition before this

court invoking article 226 of the Constitution of India.

3. A perusal of the impugned order, dated January 19, 2011, passed by the respondent-Assistant Commissioner (CT), Nandanam Assessment

Circle, Chennai, reveals that an appeal lies against the same before the Appellate Deputy Commissioner of Commercial Taxes III, Chennai 108, within 30 days. Therefore, the limitation period prescribed by the authority ended by February 19, 2011. The petitioner, without moving the

appellate authority, has moved this court by filing this writ petition on February 23, 2011, challenging the said order dated January 19, 2011, just

four days after the expiry of 30 days for filing the appeal against the impugned order.

4. Though the merits of the case are advanced for the purpose of interfering with the order of the authority, unless the petitioner has shown to this

court there is violation or infringement of fundamental rights, violation of principles of natural justice and if any order passed is ultra vires the

provisions of the relevant Act/Rules, it is not proper for the writ court to interfere with the impugned order, when there is effective and alternative

remedy of appeal available under the statute. Therefore, the writ petition is not maintainable and the merits of the case could be adjudicated before

the appellate authority, namely, the Appellate Deputy Commissioner of Commercial Taxes III, Chennai 108, in effective manner.

5. At this stage, the learned counsel for the petitioner made a plea that because of the pendency of the writ petition, the limitation period to move

the appellate authority expired and therefore, he requests time and prayed that the period of pendency of the writ petition may be excluded for the

purpose of limitation to prefer the appeal before the appellate authority. Considering the said submission, this writ petition is disposed of, with

liberty to the petitioner to move the appellate authority within a period of two weeks from the date of receipt of a copy of this order and the

appellate authority shall entertain the appeal, if the same is in order, and dispose of the appeal, on merits and in accordance with law, after giving

an opportunity of hearing to the petitioner, as expeditiously as possible. However, the period of pendency of this writ petition from February 23,

2011 up to the date of filing of the appeal by the petitioner, shall be excluded for the purpose of limitation. Further, the petitioner-company shall

work out their remedy for contesting the delay, if any, for the period of limitation of 30 days prescribed as per law. No costs. The miscellaneous

petition is closed.