

(2017) 11 MAD CK 0034

In the Madras High Court

Case No : 1360 to 1362 of 2017 and CMP No 18806 to 18808 of 2017

M/s.New Saravana Stores Bramandamai, Rep. by its Partner - APPELLANT
Y.Pondurai

Vs

The Assistant Commissioner (CT) RESPONDENT

Date of Decision : 03-11-2017

Acts Referred:

Constitution Of India — Article 226

Tamil Nadu Value Added Tax Act, 2006 — Section 84, 2(33)

Citation : (2017) 11 MAD CK 0034

Hon'ble Judges : S.Manikumar, R.Suresh Kumar

Bench : DIVISION BENCH

Advocate : S.Manikumar, R.Suresh Kumar

Judgement

1. Material on record discloses that the Assistant Commissioner (CT), Pondy Bazaar Assessment Circle, Chennai, respondent herein has passed three deemed assessment orders dated 29.12.2016, 05.01.2017 and 13.01.2017 for the years 2014-15, 2015-16 and 2013-14 respectively. According to the appellant in the monthly returns submitted by the assessee, an inadvertent error had crept in regarding reporting of commodity under the 5% category pertaining to the sales of used cars at 5% and it was inadvertently coupled alongwith other goods. Claiming the same as clerical error in the submission of the returns, petitions dated 31.03.2017 have been filed by the assessee under Section 84 of the Tamilnadu Value Added Tax Act, 2006 for rectification before the Assistant Commissioner (CT), Pondy Bazaar Assessment Circle, Chennai, the respondent herein.

2. Before the said authority, contentions were also made that one of the partners of the appellant, was residing in Puducherry, purchased the cars in his own name and the vehicles were registered in the Union Territory of Puducherry and that they were sold in Puducherry. Consideration for the purpose of sale alone was borne / favoured in the name of the appellant who is in Tamil Nadu and

registered on the file of the respondent. Therefore, it was contended that the residence of the partner was at Puducherry and that the car was purchased from a dealer situated outside the State and the relevant tax was borne at the point of first sale and thereafter the sale of the used cars was effected by the partner to a dealer outside the State of Puducherry, which is an interstate sale simplicitor. Thus, it was contended that practically there was no jurisdiction for the sufferance of tax inside the State of Tamil Nadu. Further, the appellant has contended that the returns filed by the dealer disclosing the used car sales as taxable @ 5% was unwarranted and uncalled for and it is an inadvertent error crept in, on the face of the record and that the respondent has powers to rectify the same which will help considerably in reducing the unwarranted tax burden which is otherwise not payable. Therefore, the respondent was requested to revise the deemed assessments.

3. Pursuant to the directions of this Court in W.P.No.8841 to 8843 of 2017 dated 12.04.2017, to the Assistant Commissioner (CT), Pondy Bazaar Assessment Circle, Chennai, to consider and decide the petitions filed for rectification, on merits and in accordance with law, separate orders dated 16.06.2017, have been passed in the rectification petitions for the assessment years 2013-14, 2014-15 and 2015-16.

4. When correctness of the abovesaid orders were challenged, in W.P.Nos.21169 to 21171 of 2017, writ Court by adverting to the grounds of challenge and submissions, mainly, on jurisdiction of Government of Tamilnadu to levy tax, taking note of the facts and the alternative remedy provided under the Tamilnadu Value Added Tax Act, 2006 at paragraph Nos. 9 and 10, held as hereunder.

"9.In the considered view of this Court, the contention raised by the petitioner to state that there is error apparent on the face of the record, is not purely a legal issue but a mixed question of fact and law. The respondent has noted that the income-tax certification was passed apart from the Audit Report and Form-WW duly signed by a Chartered Accountant and the contention raised by the petitioner that certification holds good only for the purpose of income-tax assessment is not acceptable. Prima facie, this Court is of the view that such a finding recorded by the respondent is correct. Nevertheless, the matter involves appreciation and re-appreciation of the factual position, especially when the deemed assessments have taken place at the instance of the petitioner who filed the returns duly supported by Form-WW Certificates by a Chartered Accountant. Therefore, this Court cannot embark upon a fact-finding exercise to examine the correctness of the stand taken by the respondent to ascertain as to whether there is an error apparent on the face of the record. Admittedly, the revisional remedy before the Joint Commissioner is not only effective but also an efficacious remedy. Since the matter involves levy of tax, and there is enactment governing the transactions which provides for hierarchy of remedies, the petitioner should not be permitted to by-pass such alternative remedy available to the petitioner. 10.Thus for the above reasons, the preliminary issue is decided

against the petitioner and it is held that the writ petitions are not maintainable."

5. Instant writ appeals have been filed against the said orders. Inviting the attention of this Court to the preamble of the Tamilnadu Value Added Tax Act, 2006 that, it is an Act to consolidate and amend the law relating to the levy of tax on the sale or purchase of goods in the State of Tamilnadu, explanation (v) to Section 2(33) of the Tamilnadu Value Added Tax Act, 2006, which defines "sale", details of the purchase of the cars and sale effected outside the state of Tamilnadu, extracted in the rectification order dated 16.06.2017 of the Assistant Commissioner (CT), Pondy Bazaar Assessment Circle, Chennai, and placing reliance on the decisions of this Court in W.P.No.16576 of 2001 dated 21.11.2003, in the matter of M/s.V.Guard Industries Limited, Coimbatore Vs. Commercial Tax Officer, Coimbatore and another and another decision in Tax Case (Appeal) No.125 of 2007 dated 13.02.2014 in the matter of M/s.CRN Investments (P) Limited Vs. the Commissioner of Income Tax, Chennai, Mrs.R.Hemalatha, learned counsel for the appellant submitted that there is an error apparent on the face of the record, when the appellant by mistake, submitted the returns and when State has no jurisdiction to levy tax for the sale effected outside the State of Tamilnadu, there being a jurisdictional error, writ petition can be maintained, and it is also her submission that when facts are not disputed, petitioner/appellant need not be driven to file a revision under Section 84 of the TANVAT Act, 2006 to the Joint Commissioner (CT), Chennai (Central).

6. Though on the above said grounds and submissions Mrs.R.Hemalatha, learned counsel for the appellant prayed to entertain the writ appeals, this Court is not inclined to do so for the reason that on more than one occasion, Hon''ble Supreme Court as well as this Court, held that when there is an effective and alternate remedy, provided under the taxing laws, writ petitions, should not be entertained. Reference can be made to few decisions, in this regard. (i). In Union of India v. T.R.Verma, AIR 1957 SC 882, the Hon''ble Supreme Court held that 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 to invoke the special jurisdiction of the High Court to issue a prerogative writ. It will be a sound exercise of discretion to refuse to interfere in a petition under Article 226 of the Constitution, unless there are good grounds to do, otherwise.

(ii) In C.A.Ibrahim v. ITO, AIR 1961 SC 609, H.B.Gandhi v. M/s. Gopinath & sons, 1992 (Suppl) 2 SCC 312 and in Karnataka Chemical Industries v. Union of India, 1999 (113) E.L.T. 17(SC) = 2000 (10) SCC 13, the Hon''ble Supreme Court held that where there is a hierarchy of appeals provided by the statute, the party must exhaust the statutory remedies before resorting to writ jurisdiction.

(iii) The general principles of law to be followed while entertaining a writ petition, when an alternative remedy is available, as per the decision of the Hon''ble Apex Court in U.P.State Spinning Co. Ltd. Vs. R.S.Pandey and Another (2005) 8 SCC 264, at para No.11 are as follows:

"Except for a period when Article 226 was amended by the Constitution (Forty-Second Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction or discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided, the high Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction."

(iv) In *United Bank of India Vs. Satyawati Tondon and Others* {(2010) 8 SCC 110}, the Hon"ble Apex Court, at paragraph Nos.43 to 45, held as follows:-

"43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they do not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the high Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of selfimposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision etc., and the particular legislation contains a detailed mechanism for redressal of his

grievance."

(v) In *Nivedita Sharma Vs. Cellular Operators Association of India and Others* {(2011) 14 Supreme Court Cases 337}, the Honourable Apex Court held that,

"An alternative remedy is not a bar to the entertaining of writ petition filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order under challenge is wholly without jurisdiction or the vires of the statute are under challenge. The Court has recognised some exceptions to the rule of alternative remedy. However, the high Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal or grievance still holds the field."

(vi) The Hon'ble Apex Court, after considering a catena of cases, in *Shauntlabai Derkar and Another Vs. Maroti Dewaji Wadaskar* {(2014) 1 Supreme Court Cases 602}, at para Nos.15 to 18, held as follows:-

"15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e, where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal Case* {*Thansigh Nathmal Vs. Supt. of Taxes*, AIR 1964 SC 1419}, *Titaghur Paper Mills Case* {*Titaghur Paper Mills Co. Ltd Vs. State of Orissa* (1983) 2 SCC 433} and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is crated by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

16. In the instant case, the Act provides complete machinery for the assessment/reassessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In *Ram and Shyam Co. Vs. State of Haryana* (1985) 3 SCC 267, this Court has noticed that if an appeal is from "Caesar to Caesar's wife", the existence of alternative remedy would be a mirage and an exercise in futility.

17. In the instant case, neither has the writ petitioner assessee described the

available alternate remedy under the Act, as ineffectual and nonefficacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of the instant case. In light of the same, we are of the considered opinion that the writ Court ought not to have entertained the writ petition filed by the assessee, wherein he has only questioned the correctness or otherwise of the notices issued under Section 148 of the Act, the reassessment orders passed and the consequential demand notices issued thereon.

18. In view of the above, we allow this appeal and set aside the judgment and order passed by the High Court in Chhabil Dass Agarwal Vs. Union of India {W.P. (c) No.44 of 2009, decided on 5/10/2010}. We grant liberty to the respondent, if he so desires, to file an appropriate petition/appeal against the orders of reassessment passed under Section 148 of the Act within four weeks" time from today. If the petition is filed before the appellate authority within the time granted by this Court, the appellate authority within the time granted by this Court, the appellate authority shall consider the petition only on merits without any reference to the period of limitation. However, it is clarified that the appellate authority shall not be influenced by any observation made by the High Court while disposing of Writ Petition (Civil) No.44 of 2009, in its judgment and order dated 5/10/2010."

(vii) After considering a plethora of judgments, in Union of India and Others Vs. Major General Shri Kant Sharma and Another {(2015) 6 SCC 773}, at para 36, the Apex Court held as follows:-

"The aforesaid decisions rendered by this Court can be summarised as follows:-

(i). The power of judicial review vested in the High Court under Article 226 is one of the basic essential features of the Constitution and any legislation including the Armed Forces Tribunal Act, 2007 cannot override or curtail jurisdiction of the High Court under Article 226 of the Constitution of India (Refer: L.Chandrakumar Vs. Union of India (1997) 3 SCC 261 and S.N.Mukherjee Vs. Union of India (1990) 4 SCC 594.

(ii). The jurisdiction of the High Court under Article 226 and this Court under Article 32 though cannot be circumscribed by the provisions of any enactment, they will certainly have due regard to the legislative intent evidenced by the provisions of the Acts and would exercise their jurisdiction consistent with the provisions of the Act (Refer: Mafatlal Industries Ltd., Vs. Union of India (1997) 5 SC 536.

(iii). When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. (Refer: Nivedita Sharma Vs. Cellular Operators Assn. of India (2011) 14 SCC 337.

(iv). The High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved

person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance. (Refer: Nivedita Sharma Vs. Cellular Operators Assn. of India (2011) 14 SCC 337.)"

(viii) In *Veerappa Pillai Vs. Raman & Raman Ltd* {1952 SCR 583}, *CCE Vs. Dunlop India Ltd* {(1985) 1 SCC 260}, *Ramendra Kishore Biswas Vs. State of Tripura* {(1999) 1 SCC 472}, *Shivgonda Anna Patil Vs. State of Maharashtra* {(1999) 3 SCC 5}, *C.A.Abraham Vs. ITO* {(1961) 2 SCR 765}, *Titaghur Paper Mills Co Ltd., Vs. State of Orissa* {(1983) 2 SCC 433}, *H.B.Gandhi Vs. Gopi Nath & Sons* {1992 Supp (2) SCC 312}, *Whirlpool Corpn Vs. Registrar of Trade Marks* {(1998) 8 SCC 1}, *Tin Plate Co. of India Ltd., Vs. State of Bihar* {(1998) 8 SCC 272}, *Sheela Devi Vs. Jaspal Singh* {(1999) 1 SCC 209} and *Punjab National Bank Vs. O.C.Krishnan* {(2001) 6 SCC 569}, this Court held that where hierarchy of appeals is provided by the statute, the party must exhaust the statutory remedies before resorting to writ jurisdiction.

7. Though, the appellant has contended that it was only an error apparent on the face of the record, upon consideration of the material on record, writ Court, vide common order made in W.P.Nos.21169 to 21171 of 2017, has observed that the income tax certification, holds good only for the purpose of income tax assessment. Writ Court has also observed that when the deemed assessment have taken place, at the instance of the petitioner, who had filed the returns, duly supported by Form-WW Certificates by a Chartered Accountant, writ Court cannot embark upon a fact-finding exercise to examine the correctness of the stand taken by the respondent therein, to ascertain as to whether there was an error apparent on the face of the record.

8. Though Mrs.R.Hemalatha, learned counsel for the appellant, invited the attention of this Court to the purchase and sale of cars, stated to have been taken place outside the State of Tamilnadu and further contended that State has no power to levy a tax and in that context there being a jurisdictional issue, Court can entertain a writ petition, we are of the view that under the scheme of the taxing statutes, even the question of jurisdiction, can always be raised before the concerned authorities. It is also to be seen that while considering the rectification petitions, filed under Section 84 of the Tamilnadu Value Added Tax Act, 2006, vide order dated 16.06.2017, the Assistant Commissioner (CT), Pondy Bazaar Assessment Circle, Chennai, has considered as to whether the case of the petitioner would fall under rectification or not. View of the said authority is that the mistake pointed out by the assessee/appellant is neither apparent from the returns filed nor reported in the audit report in Form-WW filed under Section 63A after due verification and certification by their auditors.

9. In the light of the above discussion and the decisions, we are of the view that common order of the writ Court made in W.P.Nos.21169 to 21171 of 2017 dated 09.08.2017, directing the appellant to avail the alternate remedy provided under the statute, cannot be said to be manifestly illegal warranting interference.

10. While dismissing the writ petitions, writ Court has permitted the appellant to file revision petitions before the Joint Commissioner (CT), Chennai (Central), within a period of fifteen days from the date of receipt of the copy of the common order.

11. Being aggrieved appellant has filed the instant appeals. Since we are confirming the view of the writ Court, while dismissing the instant appeals, we grant fifteen days time from the date of receipt of the common order made in these appeals, to file revision petitions to the Joint Commissioner (CT), Chennai (Central), as directed by the writ Court. No costs. Consequently, the connected Civil Miscellaneous Petitions are closed.