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**(2014) 02 AP CK 0176**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 4180 of 2014**

Sree Radha Krishna Alloys (P) Limited

APPELLANT

Vs

Assistant Commissioner (CT)

RESPONDENT

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**Date of Decision : 14-02-2014**

**Acts Referred:**

Constitution of India, 1950 — Article 14, 19, 21, 226

**Citation : (2014) 58 APSTJ 61**

**Hon'ble Judges : M. Satyanarayana Murthy, J; Ashutosh Mohunta, J**

**Bench : Division Bench**

**Advocate : Vinod Kumar Tadakamalla, Advocate for the Appellant; P. Balaji Varma, Special Standing Counsel, Advocate for the Respondent**

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## **Judgement**

M. Satyanarayana Murthy, J.—M/s. Shree Radha Krishna Alloys (P) Limited, APIIC, Hindupur, Anantapur, rep. by its authorized signatory has filed this petition under Article 226 of Constitution of India to issue a Writ of Mandamus declaring the order of assessment in Form VAT 305 issued by the 1st respondent, dated 07.01.2012 is in contravention of provisions of Andhra Pradesh Value Added Tax Act, 2005 (for short "the APVAT Act") as illegal, arbitrary and violative of Article 14, 19 and 21 and Constitution of India and consequently to set aside the assessment order. It is alleged that on 04.01.2013, the Assistant Commissioner (CT-I), Enforcement Wing, Nampally, Hyderabad, the 1st respondent herein, pursuant to the authorization issued by the Joint Commissioner (CT-I), Enforcement, Nampally, Hyderabad, the 2nd respondent herein, conducted an audit of the petitioner's company and issued Form VAT 310 on 01.02.2013. Later Best Judgment Assessment Notice was issued on 05.03.2013 followed by another notice, dated 24.08.2013. The petitioner submitted his reply vide letter dated 24.09.2013. Again the 1st respondent issued another notice on 28.09.2013, which was properly replied vide letter, dated 04.10.2013.

2. On 09.10.2013 a show cause notice was issued by the 1st respondent proposed to determine the tax liability of the petitioner for the period 2011-2012

under the provisions of the APVAT Act @ Rs. 6.12 crores. Immediately, the petitioner requested to extend the time for filing a detailed reply to the said show cause notice alleging that the petitioner had undertaken conversion work and the turnover relating to such conversion was approximately to a tune of Rs. 133 crores and that the petitioner received only 45,000 Metric Tons of steel for conversion and had converted the same into finished material of 38,000 Metric Tons, returned the same on payment of Excise Duty. Hence, it does not amount to sale, no VAT/CST is liable to be paid thereon and on all the converted material.

3. The petitioner submitted its objections vide letter, dated 02.12.2013. Further on 24.12.2013, Mohd. Suhaib, a representative of the petitioner company, appeared for personal hearing before the 1st respondent and submitted documentary evidence in relation to SEZ sales. The petitioner company was directed to submit documentary evidence relating to "receive and transfer of material" after conversion and accordingly the petitioner submitted a reply to the notice issued by the 1st respondent in Form VAT 305A, dated 09.10.2013, vide letter, dated 07.01.2014 along with documentary evidence, in electronic format copied in a USB Data Drive and the same was retrieved by the 1st respondent and on the same day, the 1st respondent passed the assessment order, which is impugned in this writ petition. Thus, the 1st respondent did not look into the evidence in electronic format and simply stated that no documentary evidence is produced and passed the impugned assessment order by fixing the tax liability @ Rs. 6,06,09,646/-. Hence, the assessment order is violative principles of natural justice and without considering the material produced by the petitioner is liable to be set aside, as it is illegal, arbitrary and prayed to issue a Writ of Mandamus.

4. At the time of admission, we heard both the learned counsel for the writ petitioner and the Special Government Pleader for Commercial Tax.

5. Admittedly, the 1st respondent issued impugned assessment order in Form VAT 305, dated 07.01.2014 fixing the tax liability at Rs. 6.12 crores and the same is challenged only on the ground that the documentary evidence is produced before the 1st respondent in electronic format copied in a USB Data Driver and the same was retrieved by the 1st respondent. But in the order, the 1st respondent simply stated that no documentary evidence is produced and passed order on the same day. So, production of evidence in electronic format copied in a USB Data Driver and retrieved the same by the 1st respondent is a disputed fact, which cannot be looked into by this Court in exercising extraordinary power under Article 226 of Constitution of India. Therefore, in view of the disputed fact referred above, it is difficult for this Court to set aside the impugned assessment order.

6. According to the provisions of the APVAT Act, the appeal lies to the Deputy Appellate Commissioner against the assessment order, which is an efficacious, effective and statutory remedy available to the assessee under the provisions of the APVAT Act, but without exhausting such alternative remedy, the petitioner approached straight away to this Court seeking extraordinary remedy of Writ of

Mandamus under Article 226 of Constitution of India. The law is well settled that when an alternative effective and efficacious remedy is available under the statute, this Court cannot exercise its extraordinary power of judicial review under Article 226 of Constitution of India.

In *M/s. Agarwal Industries Pvt. Ltd., v. The Commercial Tax Officer, Special Commodities Circle, Saroornagar, Hyderabad and Another* W.P. No. 2653 of 2009 a Division Bench of this Court held as follows:

"It is axiomatic that a writ petition would not, ordinarily, be entertained where alternative remedy of appeal is provided by the statute. Though that is not explicit, the exercise of power of judicial review under Article 226 of the Constitution of India is always subject to certain limitations; one such being the availability of effective efficacious alternative remedy. When the tax statutes create the hierarchy of appellate/second appellate and revisional authorities as well as quasi judicial Tribunals to adjudicate grievances and give effective redressal, ignoring all such remedies, the writ petition would not, ordinarily, be entertained straightaway. Liberal approach dehors the settled law would result in adding to bulging dockets of the High Court. In *I. Salam Khan Vs. The Tamil Nadu Wakf Board and Others*, , His Lordship Sri Justice Markandey Katju (as He then was), dealt with this aspect of the matter and made the following observations.

No doubt, alternative remedy is not an absolute bar to the filing of writ petitions, but at the same time it is well settled that writ jurisdiction is discretionary jurisdiction and when there is an alternative remedy, ordinarily a party must resort to that remedy first before approaching this court. Entertaining writ petitions straight away without insisting that a party should first avail of the alternative remedy is an over liberal approach which has caused immense difficulties to the High Courts in the country because they have added to the huge arrears. The Courts have already become overburdened by this over liberal approach instead of following the settled legal principle that a writ petition should ordinarily be dismissed if there is an alternative remedy. The High Courts in India are already tottering and reeling under the burden of massive arrears which have flooded the dockets of the Court, and such kind of over liberal approach has only multiplied this problem manifold. If this approach is further continued a time will surely come when the High Courts will find it impossible to function. All this has happened because unfortunately some Courts have departed from well-settled legal principles.

(emphasis supplied)

There cannot be any dispute that as laid down by the two Judge Bench of the Supreme Court in *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others*, , the alternative remedy does not operate as a bar in at least three contingencies, namely, where the writ petition has been 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 or proceedings are wholly without jurisdiction or the vires of an Act is challenged. But a three Judge Bench in C.A. Abraham, Uppotttil, Kottayam Vs. The Income Tax Officer, Kottayam and Another, held that the remedy under Article 226 cannot be invoked by an assessee abandoning the remedy provided by the statute."

The Supreme Court in a recent judgment reported in Commissioner of Income Tax and Others Vs. Chhabil Dass Agarwal, held as follows:

"Non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. It is within the discretion of this Court to grant relief under Article 226 despite the existence of an alternative remedy, however, the High court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226 However when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

7. In the instant case on hand, the Act provides complete machinery for the assessment/assessment of VAT, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Authorities, and the Assessee could not be permitted to invoke the writ jurisdiction when he had adequate remedy open to him by an appeal to the Deputy Appellate Commissioner. The affidavit did not disclose anything that the alternative remedy under the Act is ineffective and non-efficacious, nor the petitioner ascribed cogent and satisfactory reasons to approach this Court seeking extraordinary remedy of Writ of Mandamus. Therefore, the writ petition is not maintainable by applying the principles laid down by the above judgment.

8. In view of the above, we find no grounds to set aside the assessment order in Form VAT 305, dated 07.01.2014 by exercising extraordinary power of judicial review under Article 226 of Constitution of India. Accordingly, the Writ Petition is dismissed giving liberty to the petitioner to approach a statutory forum, if so advised. There shall be no order as to costs.

Miscellaneous Petitions pending, if any shall stand closed.