(2015) 12 MAD CK 0108

In the Madras High Court

Case No : W.P.(MD) Nos. 22152 to 22159 of 2015 and M.P.(MD) No. 1 of 2015

The Proprietrix U. Parameswari APPELLANT

Vs

The Assistant Commissioner (CT) RESPONDENT

Date of Decision : 10-12-2015

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2015) 12 MAD CK 0108

Hon'ble Judges : K. Ravichandra Babu, J.

Bench : Single Bench

Advocate : N. Dilip Kumar, for the Appellant; R. Karthikeyan, AGP, for the Respondent

Judgement

K. Ravichandra Babu, J.—All these Writ petitions are filed challenging the orders of assessment passed by the Assistant Commissioner (CT), Sivagangai Assessment Circle, Sivagangai.

2. It is not in dispute that as against the orders of assessment, a statutory appeal lies before the Appellate Authority namely, Appellate Deputy Commissioner (CT), Virudhunagar and such appeal has to be filed within 30 days from the date of receipt of a copy of the assessment order. It is also not in dispute that before passing the impugned assessment orders, the petitioner was heard and the objection given by the petitioner was considered by the assessing authority. It is true that this Court earlier set aside the order of assessment and directed the Assessing Authority to pass fresh order of assessment by taking note of the clarification order issued by the Advance Ruling Committee dated 28.07.2015, in accordance with law, in an order made in the Writ petition in W.P.(MD)No.11316 of 2015 dated 24.08.2015. Consequent upon the said order passed by this Court, the fact remains that the petitioner was given opportunity to submit his explanation by issuing notice to the petitioner and the petitioner has also submitted his explanation heavily relying on the clarification issued by the Advance Ruling Committee. Now the present assessment orders are passed

by the competent assessing authority, considering the objections raised by the petitioner and also considering the clarification issued by the Advance Ruling Committee.

3. The contention of the petitioner as projected by the learned counsel appearing for them before this Court in these Writ petitions is to the effect that the Assessing Authority has not considered the scope of the clarification issued and also erroneously applied certain provisions under the Tamil Nadu Value Added Tax Act, 2007, while passing the orders of assessment. Therefore, it is contended that the Writ petitions are maintainable.

4. Heard the learned counsel for the petitioner, learned Additional Government Pleader appearing for the respondents and perused the materials placed before this Court.

5. It is well settled that as against the orders of assessment, the proper course of remedy is to file a statutory appeal, since the Appellate Authority is also a fact finding authority and therefore, he can very well go into the facts and circumstances by considering the grounds raised in the appeal and pass an order on the appeal on merits and in accordance with law. When such provision is made under the statutes, empowering the Appellate Authority to pass such order, this Court at this stage cannot go into the factual aspects of the matter to find out as to whether the Assessing Authority has made some error either in applying the relevant provision or not applying the clarification letter issued by the said committee in a proper perspective.

6. As the contentions raised in these Writ petitions and the grounds raised challenging the impugned assessment orders go to the merits of the matter, this Court is not inclined to go into the same and give any finding, as this Court is satisfied that the Writ petition itself is not maintainable in view of the fact that an effective alternative remedy by way of statutory appeal is available to the petitioner. It is well settled that in fiscal matters resorting to file writ petitions before the High Court without exhausting the statutory remedy of appeal before the appellate authority cannot be entertained or permitted. In this connection, the following decisions can be usefully referred to:

"1) Raj Kumar Shivhare Vs. Assistant Director, Directorate of Enforcement and Another, .

2) Nivaram Pharma Pvt. Ltd. Vs. The customs, Excise and Gold (Control) Appellate Tribunal, South Regional Bench, The Commissioner of Central Excise (Appeals) and The Assistant Commissioner of Central Excise, Madras IV Division, .

3) United Bank of India Vs. Satyawati Tondon and Others, .

4) The Maritime Collector, The Collector of Central Excise (Appeals) and The Government of India Vs. Madura Coats Limited Ambasamudram Mills,

5) Rajeev Kumar and Another Vs. Hemraj Singh Chauhan and Others, "

7. The very same view was already taken by me in W.P(MD)No. 1409 of 2015 dated 05.02.2015 to dismiss the same by following the above said decisions on the ground that the writ is not proper remedy, when the alternative remedy by way of filing an appeal is available to the petitioner therein. It is not the case of the petitioner herein that he was not put on notice or that the authority, who passed the order of assessment, is not having the jurisdiction. On the other hand, the competent authority has passed the order of assessment, after giving due opportunity of hearing to the petitioner and by considering the objection raised by them. Needless to say that if the consideration of objection was not proper or erroneous, that cannot be a ground to maintain the writ petition, since the alleged erroneous consideration or improper consideration cannot be stated as violation of principles of natural justice. On the other hand, it may be a good ground for filing an appeal. Therefore, when the present assessment order having been passed by the competent authority, after giving opportunity of hearing to the petitioner, the same cannot be questioned under Article 226 of the Constitution of India, as the petitioner has to raise all those grounds only before the appellate authority who is also a fact finding authority.

8. Needless to say that the erroneous consideration or application of certain provisions of the law by the assessing authority may not be a reason or ground to entertain the Writ petitions, as it is always open to the writ petitioner to canvas those points before the Appellate Authority who in turn, being the factual finding authority as well, will have to consider and decide the appeal on merits and in accordance with law.

9. Thus, I find that these Writ petitions are not maintainable solely on the ground that availability of alternative remedy. It is made clear that this Court is not expressing any view on the merits of the contention raised by the Writ petitioner as it is for the Appellate Authority to consider and decide the same.

10. Accordingly, these Writ petitions are dismissed. However, liberty is granted to the petitioner to file an appeal before the Appellate Authority within a period of 4 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected M.Ps. are closed.