IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2021

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P.Nos.22049, 22056, 22060, 22064, 22066 and 22069 of 2021
and
W.M.P.Nos.23286, 23282, 23277, 23276, 23274 and 23265 of 2021

M/s.Kanunga Extrusion Private Limited,
14-2 Thally Road,
Near Railway Gate,
Hosur 635109
Represented by its
Managing Director ...Petitioner in all W.Ps.

-Vs.-

The Assistant Commissioner (ST)
Hosur (South) I Hosur. ... Respondent in all W.Ps.

Common Prayer:

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the connected records of the impugned proceedings of the respondent herein made in TIN 33163364594/2010-11, TIN 33163364594/2011-12, TIN 33163364594/2012-13, TIN 33163364594/2013-14, TIN 33163364594/2014-15 and TIN 33163364594/2015-16 respectively dated 21.04.2021 and quash the same as illegal.

For Petitioner in all W.Ps : Mr.Manoharan Sundaram
For Respondent in all W.Ps : Ms.Amirta Dinakaran
Government Advocate

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C O M M O N O R D E R

Captioned six main writ petitions have been filed assailing six separate revisional/re-assessment orders under Section 27 of 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act No.32 of 2006)' [hereinafter 'TNVAT' for the sake of convenience and clarity]. All these six orders are dated 21.04.2021, but they pertain to six different assessment years with different reference numbers. The details are as follows:

S.No	Date	Reference	Assessment Year	W.P. No.
1	21.04.2021	TIN:33163364594/2010-11	2010-2011	22049/2021
2	21.04.2021	TIN:33163364594/2011-12	2011-2012	22056/2021
3	21.04.2021	TIN:33163364594/2012-13	2012-2013	22060/2021
4	21.04.2021	TIN:33163364594/2013-14	2013-2014	22064/2021
5	21.04.2021	TIN:33163364594/2014-15	2014-2015	22066/2021
6	21.04.2021	TIN:33163364594/2015-16	2015-2016	22069/2021

2. The aforementioned six revisional/re-assessment orders shall be collectively referred to as 'impugned orders' in plural and 'impugned order' in singular wherever necessary (if it becomes necessary).

3. Mr.Manoharan Sundaram, learned counsel for writ petitioner in all the six writ petitions, who is before this Virtual Court submits that this is the second round of litigation. The respondent had made revisional/re-assessment orders earlier, the same were called in question/assailed by the writ petitioner by way of six writ petitions in this Court being W.P.Nos.5818 to 5823 of 2018 and all these six writ petitions together with writ miscellaneous petition Nos.7155 to 7160 of 2018 thereat came to be disposed of by a Hon'ble Single Judge in and by a common order dated 15.03.2018.

4. Adverting to aforementioned common order in earlier round of litigation and more particularly paragraph Nos.3 and 5 thereat, learned counsel submitted that this is a case of mismatch and if the dealer at the far end had not paid the tax, the writ petitioner cannot be penalized for the same. According to learned counsel for writ petitioner, the impugned orders are not in accordance with directions given by this Court in the aforementioned previous common order, more particularly, paragraph

No.3 thereat wherein paragraph Nos.56 to 58 of another order made in W.P.No.105 of 2016 etc., dated 01.03.2017 have been extracted and reproduced. To be noted, this W.P.No.105 of 2016 etc., has now come to stay as what is known as JKM Graphics Solutions principle in litigation parlance. However, in the case on hand, notwithstanding very many averments and several grounds raised in writ affidavit, the lone grievance projected by learned counsel for writ petitioner in the hearing is, this being a case of alleged mismatch, writ petitioner cannot be penalized if the dealer at the far end had not paid the tax.

5. Ms.Amirta Dinakaran, learned State counsel (hereinafter 'Revenue counsel' for the sake of convenience and clarity), accepts notice on behalf of lone respondent in all six writ petitions. Owing to the narrow compass of captioned writ petitions and acute/short legal angle on which the matters turn, main captioned writ petitions were taken up with the consent of learned counsel on both sides.

6. Adverting to the impugned orders and more particularly, No.3 in

reference thereat, learned Revenue counsel submits that the respondent has in fact given an opportunity of personal hearing to writ petitioner in and by communication dated 11.02.2021, but writ petitioner-dealer had failed to even submit a reply. It was pointed out that this is not disputed by writ petitioner. Learned Revenue counsel also submits that if reply had been filed by the dealer and if the dealer had responded to 11.02.2021 personal hearing notice (issued pursuant to aforementioned earlier common order of this Court), the respondent would have got an opportunity to examine the same, but not having done that, the dealer/writ petitioner has now embarked upon second round of litigation to avoid pre-deposit qua alternate remedy. Learned Revenue counsel pointed out that the writ petitioner has appeal remedy by way of statutory Appeal under Section 51 of TNVAT Act. To be noted, this is mentioned in the impugned order itself by way of a note and the same reads as follows:

> *'Note:- An appeal against this order lies before the Appellate Deputy Commissioner of Commercial Taxes, Salem within 30 days of receipt of this order.'*

7. Before proceeding further, this Court is constrained to record that this is yet another case where the respondent has made the impugned order without mentioning exact provision of law under which it has been made. However, in this case, there is no disputation or disagreement between the parties that the impugned orders have been made under Section 27 of TNVAT Act. By way of reply, learned counsel for writ petitioner besides reiterating his submissions made in the opening arguments, submitted that personal hearing was no doubt offered vide 11.02.2021 communication, but the respondent should have gone into the question of whether the dealer at the far end has paid the tax, the same has not been done in spite of specific observations in this regard made by this Court in aforementioned previous common order dated 15.03.2018.

8. This Court now considers the rival submissions or in other words, this Court now embarks upon the exercise of discussion, dispositive reasoning and arriving at a conclusion.

9. At the outset, this Court is clear in its mind that personal hearing is not statutorily imperative for a legal drill i.e., assessment of escaped turnover/wrong availment of 'Input Tax Credit' ['ITC']. This is owing to the language in which common proviso to sub-sections (1) and (2) of Section 27 of TNVAT Act is couched. Common proviso to sub-sections (1) and (2) of Section 27 of TNVAT Act reads as follows:

> *'27. Assessment of escaped turnover and wrong availment of input tax credit.-*
>
> *(1) (a) Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of sub-section (3), at any time within a period of five years from the date of assessment order by the assessing authority, determine to the best of its judgment the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary.*
>
> *(b) Where, for any reason, the whole or any part of the turnover of business of a dealer has been assessed at a rate lower than the rate at which it is assessable, the assessing authority may, at any time within a period of five years from the date of assessment, reassess the tax due after making such enquiry as it may consider necessary.*
>
> *(2) Where, for any reason, the input tax credit has been*

availed wrongly or where any dealer produces false bills, vouchers, declaration certificate or any other documents with a view to support his claim of input tax credit or refund, the assessing authority shall, at any time, within a period of five years from the date of order of assessment, reverse input tax credit availed and determine the tax due after making such a enquiry, as it may consider necessary:

Provided that no order shall be passed under sub-sections (1) and (2) without giving the dealer a reasonable opportunity to show cause against such order.

(underlining made by this Court to supply emphasis and highlight)

10. The expression 'a reasonable opportunity to show cause against such order' occurring in the proviso has been explained by this Court in a detailed and elaborate order in ***State Bank of India officers*** case law, ***[State Bank of India Officer's Association (CC) - SBIOA Vs. The Assistant Commisioner, Chennai-1 in W.P.No.22634 of 2019 order dated 01.08.2019].*** This Court is informed that this order has not been reported in any law journal. Therefore, this Court deems it appropriate to give case number and date of order for the benefit of all concerned. Be that as it may, what is of greater significance is, this order made in ***State***

Bank of India officers case law was carried in appeal by way of intra-Court appeal vide W.A.No.4073 of 2019 and a Hon'ble Division Bench of this Court dismissed the writ appeal in and by order dated 16.12.2019. Therefore, the order of this Court made in *State Bank of India officers* case law, has been sustained vide order of Hon'ble Division Bench.

11. Be that as it may, in ***State Bank of India officers*** case law, this Court noticed that the language in which proviso to sub-section (4) of Section 22 of TNVAT Act is couched is different from the language in which common proviso to sub-sections (1) and (2) of Section 27 of TNVAT Act is couched. This Court observed that the expression used in sub-section (4) of Section 22 of TNVAT Act is 'a reasonable opportunity of being heard'. This is distinguishable from the expression 'reasonable opportunity to show cause' and it was on this basis that this Court has held that personal hearing is not statutorily imperative qua a legal drill under Section 27 of TNVAT Act. However, it is not necessary to dilate or elaborate further on this facet of the case on hand, as this Court has considered it appropriate to direct the respondent to give personal

hearing and personal hearing has also been given. To be noted, even in ***State Bank of India officers*** case law, this Court has made it clear that if the Assessing Authority considers it necessary to hold a personal hearing, it is well open to the Authority to hold a personal hearing if it appears necessary owing to the nature of the issue raised and therefore, personal hearing for revision of assessments under Section 27(1) and/or 27(2) is optional depending on the nature of the issues involved, but it is not statutorily imperative. It is not necessary to elaborate any further on this facet of the matter.

12. Reverting to the case on hand, from the narrative thus far, it will be clear that there is no disputation or disagreement that the writ petitioner has been given an opportunity of personal hearing vide communication dated 11.02.2021 (cited in reference as No.3 in the impugned orders), but the writ petitioner did not respond/avail the same. Therefore, the only grievance of the writ petitioner is, mismatch ought to have been examined by the Assessing Officer though the writ petitioner has not responded. However, learned Revenue counsel points out that it

would have been examined if the dealer/writ petitioner had responded. It may not be necessary to delve further into this aspect of the matter, owing to alternate remedy that is available to the writ petitioner i.e., statutory appeal under Section 51 of TNVAT Act. There is no disputation or disagreement before this Court that alternate remedy against impugned orders is available to writ petitioner-dealer by way of statutory appeal under Section 51 of TNVAT Act.

13. This takes us to alternate remedy rule. Law is well settled that alternate remedy rule is not an absolute rule. In other words, alternate remedy rule is a discretionary rule and it is a self-imposed restraint qua writ jurisdiction. In this scenario, in a long line of authorities i.e., catena of case laws, Hon'ble Supreme Court has repeatedly held that alternate remedy rule though not absolute, should be applied with utmost rigour when it comes to fiscal Statutes. The authorities are ***Dunlop India*** case ***[Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd., and others*** reported in ***(1985) 1 SCC 260], Satyawati Tandon [United Bank of India Vs. Satyawati Tondon and***

others reported in ***(2010) 8 SCC 110]*** and ***K.C.Mathew [Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C.*** reported in ***(2018) 3 SCC 85].*** To be noted, these are only illustrative and not exhaustive.

14. Relevant paragraph in ***Dunlop*** case is paragraph No.3 and relevant portion of the same reads as follows:

> *'**3. .....** Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly*

discouraged.'

(Underlining made by this Court to supply emphasis and highlight)

15. ***Satyawati Tandon*** principle was reiterated by Hon'ble Supreme Court in ***K.C.Mathew*** *case.* Relevant paragraph in ***K.C.Mathew*** case is paragraph 10 and the same reads as follows:

'10. In ***Satyawati Tondon*** *the High Court had restrained further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding: (SCC pp.123 & 128, Paras 43 & 55)*

"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 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.

55.It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.'

(underlining made by this Court to supply emphasis and highlight)

16. To be noted in paragraph No.10 of ***K.C.Mathew's*** case, ***Satyawati Tondon*** principle has been extracted and reproduced. Therefore, this Court refrains itself from embarking upon exercise of extracting and reproducing relevant paragraphs from ***Satyawati Tondon*** case law. More importantly, in a very recent judgment in ***Commercial Steel Limited*** case [***Civil Appeal No 5121 of 2021, The Assistant Commissioner of State Tax and Others Vs. M/s Commercial Steel Limited***], Hon'ble Supreme Court i.e., a three member Bench of Hon'ble Supreme Court speaking through Hon'ble Justice Dr.Dhananjaya Y Chandrachud reiterated this alternate remedy rule and held that writ jurisdiction can be exercised only if any of the exceptions arise, exceptions have also been adumbrated and all these are captured in paragraph Nos.11 and 12 of ***Commercial Steel Limited*** case which read as follows:

> *'11 The respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances*

where there is: (i) a breach of fundamental rights; (ii) a violation of the principles of natural justice; (iii) an excess of jurisdiction; or (iv) a challenge to the vires of the statute or delegated legislation.

12 In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent.'

17. From the narrative, discussion and dispositive reasoning thus far, it is very clear that this case does not fall under any of the aforementioned exceptions. The question of looking into the records, going into the facts and examining mismatch, this exercise can be done by the Appellate Authority. This Court is of the considered view that the Appellate Authority doing such an exercise would be appropriate. This is

more so as the Appellate Authority can well go into facts. This Court, therefore, is of the considered view that this is not a case for exercising writ jurisdiction for interference qua impugned orders. Therefore, the campaign against impugned orders in writ jurisdiction in the captioned main writ petitions fail. However, it is made clear that it is open to the writ petitioner to avail alternate remedy under Section 51 of TNVAT Act, if the writ petitioner chooses to do so, subject to limitation and pre-deposit conditions set out therein, i.e., if the writ petitioner satisfies these conditions and takes alternate remedy route i.e., statutory appeal, the Appellate Authority shall deal with the appeals on its own merits and in accordance with law, uninfluenced by any of the observations made in this order. In any event, though obvious, it is made clear that no opinion has been expressed on the merits of the matter in this order.

18. The sequitur that follows from the narrative discussion and dispositive reasoning set out thus far is captioned writ petitions fail and the same deserve to be dismissed albeit preserving the rights of the writ petitioner to pursue alternate remedy subject to pre-deposit and limitation

conditions.

19. Captioned Writ Petitions are dismissed preserving rights of the writ petitioner in the above manner. Consequently, connected writ miscellaneous petitions are also dismissed as closed. There shall be no order as to costs.

21.10.2021

Speaking/Non-speaking order
Index: Yes/No

mk/nsa

To

The Assistant Commissioner (ST)
Hosur (South) I Hosur.

M.SUNDAR.J.,

mk

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and
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