IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2022

CORAM

THE HON'BLE Mr.JUSTICE **M.SUNDAR**

W.P.No.33291 of 2022
and
WMP.No.32734 of 2022
in
W.P.No.33291 of 2022

M/s.Suguna Automobiles,
(Represented by Managing Partner
P.Priya Sadhana)
No.446, Mettupalayam Road,
Near North Flyover,
Coimbatore-641 043.

... Petitioner

-Vs.-

The Assistant Commissioner (ST)
Mettupalayam Road Circle,
Coimbatore.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the files of the respondent herein, in his proceedings in 304/2019/A2 dated 06.09.2021 and quash the same or pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.K.A.Parthasarathy

For Respondent : Mr.T.N.C.Kaushik
Additional Government Pleader (Taxes)

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O R D E R

This order will now govern the captioned main writ petition and the captioned 'Writ Miscellaneous Petition' ['WMP'] thereat.

2. In the captioned main writ petition, 'an order dated 06.09.2021 bearing Reference No.304/2019/A2' [hereinafter 'impugned order' for the sake of convenience and clarity] has been called in question.

3. Mr.K.A.Parthasarathy, learned counsel on record for writ petitioner is before this Court. Learned counsel submits that the impugned order has been made under Section 73 of 'Central Goods and Services Tax Act, 2017' [hereinafter 'C-GST Act' for the sake of brevity, convenience and clarity].

4. Notwithstanding very many averments in the writ affidavit, learned counsel, at the hearing predicated his challenge to the impugned order on two main points and they are as follows:

a) a 'Show Cause Notice' ['SCN'] as contemplated under sub-section (2) of Section 73 of C-GST Act was not issued before

making the impugned order;

b) the objections of writ petitioner in response to the notice which is a part of scrutiny under Section 61 of C-GST Act has been perfunctorily dealt with i.e., without dispositive reasoning.

5. Mr.T.N.C.Kaushik, learned Additional Government Pleader (Tax) accepted notice on behalf of the sole respondent.

6. Owing to the narrow compass on which the main writ petition turns, a counter affidavit from the Revenue is not necessary and the main writ petition was taken up with the consent of both sides.

7. Learned counsel for writ petitioner in addition to the aforementioned two focused points, made submissions touching upon the merits of the matter i.e., saying that the writ petitioner deals with two wheelers across inter State borders, entry tax is paid and if this had been taken into account, 'Input Tax Credit' ['ITC'] would have been available to the writ petitioner. The sequitur submission is that if this had been taken into account, the respondent would not have come to the conclusion that ITC has been wrongly availed by the writ petitioner. In the case on hand, this Court

considers it appropriate to not to delve into or dilate on the merits of the matter.

8. As regards the first point captured supra, learned Revenue counsel draws the attention of this Court to one paragraph in the impugned order, which reads as follows:

> *'On verification of Form-I of VAT return for the month of June-2017, the excess ITC available is Rs.0.00. Hence the amount of Rs.31,99,645/- is wrong claim of ITC. In this regard, a notice was sent to the taxable person on 21.11.2019 and DRC-02 notice on 19.02.2021 in which the dealer was advised to pay the wrong claim of input tax credit along with penalty and interest within 15 days of the notice as per under section 74 of TNGST Act, 2017. On verification of the documents filed by the dealer vide reference 3rd cited, it is found that, the documents were not satisfactory to prove their claim of ITC in TRN-1 form. And The dealer also not attended the personal hearing dated: 24.06.2021 and 08.07.2021.'*

9. To be noted, numbers have not been assigned to paragraphs in the impugned order. Be that as it may, adverting to aforesaid paragraph, learned counsel submits that in the course of scrutiny under Section 61 of C-GST Act, notice was issued, writ petitioner responded and the same has been considered. More importantly, learned Revenue counsel drew the attention of this Court to

the last sentence and submitted that the writ petitioner has not attended the personal hearings on 24.06.2021 and 08.07.2021. This means that though the writ petitioner was not put on notice (SCN) before the impugned order but the writ petitioner has also been given a personal hearing.

10. Learned counsel for writ petitioner enters upon a disputation/contestation qua the above submission and submits that the writ petitioner was not put on notice as regards a personal hearing. This turns entirely on disputed facts.

11. The next point urged by the learned counsel for writ petitioner is that the reply to the notice as part of the scrutiny proceedings under Section 61 C-GST Act has been perfunctorily dealt with as it has merely been stated that the reply is not satisfactory without elaborating on the same. In the considered view of this Court this is a ground for appeal.

12. To be noted, a statutory appeal against the impugned order is available to the writ petitioner under Section 107 of C-GST Act. There is no disputation about this obtaining position of law.

13. This takes this Court to the alternate remedy rule. There can be no two opinions that alternate remedy rule is not an absolute rule. It is clearly a

rule of discretion. It is not just a rule of discretion but it is a self-imposed restraint when it comes to a writ Court exercising jurisdiction *inter alia* under Article 226 of The Constitution of India.

14. Be that as it may, in a long line of authorities starting from ***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*** case [***United Bank of India Vs. Satyawati Tondon and others*** reported in ***(2010) 8 SCC 110***], ***Commercial Steel*** case law authored by Hon'ble Justice Dr.Dhananjaya Y Chandrachud [***The Assistant Commissioner of State Tax Appellant(s) and Others Vs.M/s Commercial Steel Limited***], ***K.C.Mathew*** case **[*Authorized Officer, State Bank of Travancore Vs. Mathew K.C.*** reported in ***(2018) 3 SCC 85***] and ***State of Maharashtra and Others Vs. Greatship (India) Limited*** reported in ***2022 SCC OnLine SC 1262*** rendered on 20.09.2022, Hon'ble Supreme Court has repeatedly held that the rigour of alternate remedy rule is very high and the bench mark is very high and threshold barrier is stiff in fiscal law statutes qua alternate remedy Rule.

15. Relevant paragraphs in ***Dunlop India*** case is paragraph 3 and 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.'*
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> ***(Underlining made by this Court to supply emphasis and highlight)***

16. In ***K.C.Mathew*** case, relevant paragraph 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.*
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> *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)

17. To be noted, in ***K.C. Mathew's*** case, the paragraph extracted and reproduced supra, ***Satyawati Tondon*** principle has been reiterated.

18. Relevant paragraphs in ***Commercial Steel*** case law authored by Hon'ble Justice Dr.Dhananjaya Y Chandrachud are Paragraphs 11 and 12 and the same 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 CA 5121/2021 7 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.'

19. Relevant paragraph in ***Greatship*** case law is Paragraph 16 and the same reads as follows:

'16. *Now so far as the reliance placed upon the decisions of this Court by the learned Senior Advocate appearing on behalf of the respondent, referred to hereinabove, are concerned, the question is not about the maintainability of the writ petition under Article 226 of the Constitution, but the question is about the entertainability of the writ petition against the order of assessment by-passing the statutory remedy of appeal. There are serious disputes on facts as to whether the assessment order was passed on 20.03.2020 or 14.07.2020 (as alleged by the assessee). No valid reasons have been shown by the assessee to by-pass the statutory remedy of appeal. This Court has consistently taken the view that when there is an alternate remedy available, judicial prudence demands that the court refrains*

from exercising its jurisdiction under constitutional provisions.'

20. To be noted, in ***Greatship*** case, Hon'ble Supreme Court has traced many of the aforementioned case laws, more particularly ***Dunlop India***, ***Satyawati Tandon*** case laws, has returned its finding and reiterated the ratio regarding alternate remedy Rule in fiscal law statutes. To be noted, ***Greatship*** case is a matter arising under Maharashtra Value Added Tax, 2002, Central Sales Tax Act, 1956 and it is in that context that alternate remedy rule was considered.

21. In the light of the narrative and dispositive reasoning set out thus far, both the points urged by learned counsel for writ petitioner does not find favour with this Court in the case on hand. This means curtains are dropped qua the captioned writ petition but it is open to the writ petitioner to avail the statutory appeal remedy under Section 107 subject of course to Limitation and pre-deposit if any. On limitation, if the writ petitioner chooses to resort to Section 14 of Limitation Act (as regards time spent in pursuing this writ petition), it will be at the discretion of Appellate Authority to consider the same on its own merits and in accordance with law.

22. Captioned writ petition fails, consequently, captioned WMP also fails, both are dismissed albeit preserving the rights of the writ petitioner to the

limited extent of availing a statutory remedy subject to limitation and/or pre-deposit if any. Though obvious, it is made clear that if the writ petitioner chooses to avail the statutory remedy, the Appellate Authority shall consider the appeal on its own merits and in accordance with law untrammeled by this order, which is made for the limited purpose of considering writ petitioner's challenge to the impugned order in Writ jurisdiction.

23. Captioned writ petition and WMP are dismissed. There shall be no order as to costs.

12.12.2022
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To

The Assistant Commissioner (ST)
Mettupalayam Road Circle,
Coimbatore.

M.SUNDAR, J

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