

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2021

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THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P.Nos.22150, 22152 and 22154 of 2021

and

W.M.P.Nos.23385, 23386, 23388, 23389, 23390 and 23391 of 2021

M/s. Steel Centre
(Represented by its Partner, Shri. Syed Imtiyaz Ahamed)
S.F.No.163/1 Door No.49/2
Athanur Amman Kovil Street, Ganapathy
Coimbatore 641 006. ...Petitioner in all W.Ps.

Vs.-

State Tax Officer (Inspections 1)
O/o. The Deputy Commissioner (ST) Intelligence
Dr.Balasundaram Road
Coimbatore 641 018. ... 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, calling for records, quashing and setting aside the impugned order bearing No.33AAMFS6152PIZL/2017-18, 33AAMFS6152PIZL/2018-19, 33AAMFS6152PIZL/2019-20 respectively dated 08.07.2021 passed by the respondent as the said order is in violation of the principles of natural justice and also in violation of

the provisions of CGST Act and Articles 14 and 19(1)(g) of the Constitution.

For Petitioner in all W.P.s : Mr.G.Natarajan
For Respondent in all W.P.s : Ms.Amirta Dinakaran
Government Advocate

COMMON ORDER

Mr.G.Natarajan, learned counsel for writ petitioner in all the three captioned writ petitions is before this Virtual Court. The issue involved in all the three writ petitions is one and the same is learned counsel's say. Three separate orders made by the lone respondent in the three captioned main writ petitions, all dated 08.07.2021 bearing reference Nos. 33AAMFS6152PIZL/2017-18, 33AAMFS6152PIZL/2018-19 and 33AAMFS6152PIZL/2019-20 qua assessment years 2017-2018, 2018-2019 and 2019-2020 respectively have been assailed in the captioned main writ petitions. To be noted, all these three orders have been made under Section 74 of of 'Tamil Nadu Goods and Services Tax Act, 2017 (Tamil Nadu Act 19 of 2017)' [hereinafter 'TN-GST Act' for the sake of convenience and clarity] and 'Central Goods and Services Tax Act, 2017' [hereinafter 'C-GST Act' for the sake of convenience and clarity] though provision of law under which the impugned orders have been made have

not been set out in the impugned orders.

2. Notwithstanding very many averments and several grounds raised in the writ affidavit, learned counsel for writ petitioner in all the three writ petitions made one focused submission in the Virtual Court and that focused submission is, the writ petitioner has sent a reply to the three impugned orders, the respondent has held that it finds reply to be admissible, but has ultimately passed impugned orders on the basis that the writ petitioner is the beneficiary of 'Input Tax Credit' ['ITC'] and the same has been adjusted towards outward tax liability. Learned counsel submits that this means that the objections of the writ petitioner has not been considered and objections of writ petitioner not being considered is violation of one of the facets of 'Natural Justice Principle' ['NJP'].

3. 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 the three writ petitions. Owing to the narrow compass of the captioned writ petitions and acute legal angle on

which the matter turns, the main writ petitions were taken up with the consent of learned counsel on both sides.

4. In response to the aforementioned focused submission i.e., lone point urged by learned counsel for writ petitioner, learned Revenue counsel submits that it cannot be gainsaid that objections of the writ petitioner has not been considered. The objections has been taken into account and respondent vide impugned orders has in fact held that writ petitioner tax payer being beneficiary, ITC has been adjusted towards outward tax liability. Learned Revenue counsel went on to say that it is the argument of learned counsel for writ petitioner that this is insufficient or reason is inadequate but even on an extreme demurer this can only be a ground for appeal and it does not warrant interference in writ jurisdiction on NJP infraction ground. Learned Revenue counsel pointed out that alternate remedy is available to writ petitioner qua all three impugned orders and alternate remedy is appeal under Section 107 of TN-GST Act and C-GST Act.

5. There is no disputation or disagreement before this Court that alternate remedy by way of appeal under Section 107 of the two Statutes is available to the writ petitioner. This takes us to two questions, one is whether there is NJP violation and the other is whether this is a case where alternate remedy rule will apply.

6. This Court now embarks upon the exercise of discussion and giving its dispositive reasoning qua the aforementioned two questions.

7. With regard to NJP violation, if the articulation in the impugned orders is insufficient or in other words, if it is not ample or adequate, it becomes a question of whether it is terse and epigrammatic or laconic. Even a terse order can be eloquent. An order can be terse but epigrammatic. It can be tersely eloquent. An order can appear to give out reason, but it can be laconic. In this case on hand ITC being allegedly adjusted towards outward tax liability turns heavily on facts/figures and it would be appropriate for an Appellate Authority which can go into facts and have the benefit of records to go into this. Therefore, it cannot

be gainsaid that this is a case where objections of writ petitioner not being considered point is compelling enough to warrant interference in writ jurisdiction on the teeth of alternate remedy. Therefore, this is not a case where ***Tin Box*** principle [***Tin Box Company, New Delhi Vs. Commissioner of Income Tax, New Delhi, reported in 2001 9 SCC 725***] will come into play. This means that this Court is of the considered view that on the facts and circumstances of the case on hand, alleged NJP violation point is not compelling enough to warrant interference in writ jurisdiction. This takes us to alternate remedy rule. Alternate remedy rule is no doubt not an absolute rule. In other words, alternate remedy rule is discretionary and it is a self-imposed restraint qua writ jurisdiction. However, Hon'ble Supreme Court in a long line of authorities i.e., catena of case laws has held that alternate remedy rule has to be very strictly applied i.e., with utmost rigour when it comes to fiscal Statute. This is *inter-alia* in ***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 Tandon 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].

8. To be noted, aforementioned three case laws are illustrative not exhaustive qua long line of case laws alluded to supra.

9. 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)

10. **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 Tandon** 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)*

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"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)

11. 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 the exercise of extracting and reproducing relevant paragraphs from **Satyawati Tondon** case law also.

12. Be that as it may, very recently i.e., on 03.09.2021 Hon'ble Supreme Court i.e., a three member Bench of Hon'ble Supreme Court speaking through Hon'ble Justice Dr.Dhananjaya Y Chandrachud 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**], while reiterating the aforementioned Rule of alternate remedy rule qua fiscal Statute has culled out the exceptions to alternate remedy rule and held that interference in writ jurisdiction shall be only under exceptional circumstances and there is also an adumbration of exceptional circumstances. Relevant paragraphs of **Commercial Steel Limited** case law are paragraph Nos.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 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.'

13. In the case on hand, the lone point that is urged before this Court turns on NJP violation. This Court has come to the conclusion (as

would be evident from the discussion and dispositive reasoning articulated supra) that alleged NJP facet violation in this case is not compelling enough. Absent compelling NJP violation, as there is no other exception (exceptions to alternate remedy rule) that arises in the case on hand, it is clear that this is a fit case to relegate the writ petitioner to alternate remedy by way of statutory appeal under Section 107 of TN-GST Act and C-GST Act.

14. Before concluding, as this Court is relegating writ petitioner-dealer to alternate remedy of statutory appeal, it is made clear that this Court has not expressed any view or opinion on the merits of the matter. If the writ petitioner chooses to take alternate remedy route or statutory appeal under Section 107 of TN-GST Act and C-GST Act, the same will be dealt with and decided on its own merits, in accordance with law by Appellate Authority uninfluenced by any observation that is made in this order which is for the limited purpose of disposal of captioned writ petitions. Appeal will be subject to limitation and pre-deposit conditions, but this Court refrains itself from expressing any opinion on the same as

all these are in the domain of the Appellate Authority. In this regard, it is open to the writ petitioner to make a plea before the Appellate Authority that the time spent in this Court in these writ petitions should be excluded (under Section 14 of Limitation Act, 1963) for the purpose of computation of limitation qua appeals. If the writ petitioner chooses to do so, the same shall be decided on its own merits and in accordance with law by the Appellate Authority.

15. Captioned Writ Petitions are dismissed albeit preserving rights of writ petitioner qua statutory appeal under Section 107 of TN-GST Act and C-GST Act. Consequently, connected miscellaneous petitions are also disposed of as closed. There shall be no order as to costs.

21.10.2021

Speaking/Non-speaking order

Index: Yes/No

mk/nsa

P.S.

After the above order was pronounced learned counsel for writ petitioner requested for return of original impugned orders to enable writ petitioner to pursue alternate remedy. Registry to return the original impugned orders to learned counsel on record for writ petitioner under due acknowledgment forthwith.

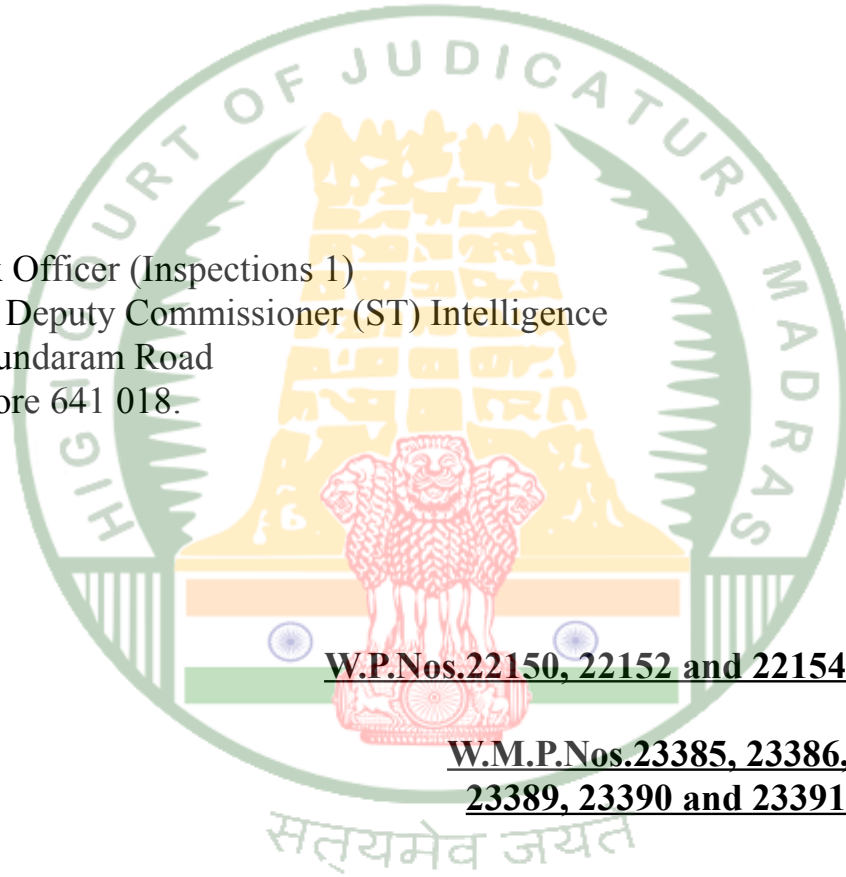
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M.SUNDAR.J.,

mk

To
State Tax Officer (Inspections 1)
O/o. The Deputy Commissioner (ST) Intelligence
Dr.Balasundaram Road
Coimbatore 641 018.



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