IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2017

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THE HON'BLE Mr. JUSTICE K.RAVICHANDRABAABU

W.P.No.9103 of 2017
and
W.M.P.No.10040 of 2017

Tvl.Ahamed Traders,
Represented by tis Proprietor
Mr.A.Ahamed Mohideen
No.13, Ragavan Colony,
Andavar Nagar,Kodambakkam,
Chennai - 24. ... Petitioner

Vs.

The Commercial tax Officer
MMDA colony Assessment Circle,
No.10, Palaniappa Maligai,
Greams Road,
Chennai-6. ... Respondent

This writ petition is filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records of the respondent assessment proceedings in TIN 33501482995/2011-12 dated 22.02.2017 and quash the same as illegal and direct the respondent to follow the law laid down by this Court in the case of M/s. JKM Graphics Solutions Private Limited in W.P.No.105 of 2016 dated 01.03.2017

For Petitioner : Mr.M.Desingu
For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader (T)

Prayer in WP.105/16

TO issue a Writ of Certiorari to call for records of the 1st respondent in TIN 33020524802/2013-14 dt 17.11.2015, and quash the same as being violative of principles of natural justice, contrary to the provisions of the Tamil Nadu Value Added Tax Act and hence invalid and illegal

O R D E R

Mr.S.Kanmani Annamalai, learned Additional Government Pleader, takes notice for the respondent and by consent of the parties, the main writ petition itself is taken up for final disposal, since the issue involved in this case is admittedly covered by the decision made by this Court in a batch of cases in W.P.No.105/2016 etc. dated 01.03.2017.

2. Heard both sides.

3. The petitioner is aggrieved against the order of assessment dated 22.02.2017 passed by the respondent based on the Web Report.

4. Learned counsel for the petitioner submitted that the procedure adopted by the respondent in passing the impugned order without affording the details of such report to the petitioner and making a cross enquiry with the dealers, is not sustainable in view of the recent decision of this Court in a batch of writ petitions in W.P.Nos.105 of 2016 etc. dated 01.03.2017, wherein at paragraph Nos.56 to 58, it has been observed as follows:

> *"56. The procedure adopted under the Maharastra VAT Act appears to be a more reasonable procedure, the Rules have been so designed to constitute independent authorities, who will in exercise jurisdiction to dispose of the objections etc. However, this Court cannot legislate nor direct the State to legislate in a particular passion and it is for the state to bring about and appropriate rules and set procedures so that when discrepancy is noted while comparing the return with that of the figures available with the Department in their web portal, there should be an exercise carried out by the department within its level before calling upon the dealer to show cause. This can be achieved only if there is a centralised mechanism and if the present practice is allowed to prevail, it would only result in multiplicity of proceedings with more number of cases pending before the Courts and Appellate forums, thus jeopardizing the interest of revenue. Therefore, it is high time the Principal Secretary and Commissioner of Commercial Taxes in consultation with him officers lays out a detailed procedure as to how to take forward cases of mismatch, evolve a central mechanism, which can go into these aspect and furnish details in full form to the respective Assessing Officers, who can decide for themselves as to whether there is a case made out to call upon their dealer to explain. If this centralized mechanism is not put in place exclusively for such purpose, it would result in notices and orders being issued by the respective Assessing Officers without*

even the knowledge of the Assessing Officer of the other end dealer resultantly no action being taken against other end dealer, assuming, he is at fault. Therefore, it is high time the Department wakes up and stops the one way approach and examine the matter in a holistic manner so that the defaulting dealer is brought to books.

57. Hence, for all the above reasons, all the Writ Petitions are allowed and the notices/orders either original or appellate or revisional are set aside and the matters are remanded to the respective Assessing Officers, to undertake a fresh exercise by conducting a thorough enquiry in consultation with the Assessing Officers of the other end dealer for which purpose the Commissioner of Commercial Taxes shall empower the Assessing Officers to seek information from other circles as well and in the mean time to evolve a centralized mechanism to exclusively deal with the cases of mismatch and while doing so, the Principal Commissioner shall take note of the procedures adopted by the other States, more particularly, in Maharastra, Gujarat and Delhi and if any statutory amendments have to be made, make appropriate recommendations to the State Government, and till then to devise a procedure which is fair and reasonable and afford an opportunity to the dealer to putforth his case and establish that he is entitled to the concession/set-off availed.

58. Since these Writ Petitions have been allowed and the impugned orders have been set aside and the matters have been remanded for fresh consideration the petitioners/dealers are not entitled to raise the plea of limitation, when fresh show cause notices are issued and they are directed to submit their explanation to enable the Assessing Officers to adjudicate their case. The Court places on record the valuable assistance of Ms.R.Charulatha Advocate of M/s.Lakshmikumaran and Sridharan Attorneys. Consequently, connected Miscellaneous Petitions are closed. No costs."

5 . Considering the above stated facts and circumstances and considering the fact that the issue involved in this case is covered by the above decision of this Court, the writ petition is allowed and the impugned order of assessment is set aside and consequently, the matter is remitted back to the respondent for passing a fresh order of assessment, after following the procedure and guidelines issued by this Court in the above said case. The petitioner should be given an opportunity of personal hearing

before concluding the assessment. The whole exercise shall be completed by the respondent within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

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Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1 The Commercial Tax Officer,
MMDA Colony, Assessment Circle,
NO.10, Palaniappa Maligai,
Greams Road, Chennai-06.

C.C. to The Special Government Pleader (Taxes) SR.NO. 23039

C.C. to Mr.M.Desingu Advocate SR.NO. 22754

W.P.No.9103 of 2017

SVI (CO)

VS 21.04.2017