IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2017

CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRA BAABU

W.P.Nos.5148 to 5151/2017
and
W.M.P.Nos.5439 to 5442/2017

Rajam Constructions,
Represented by its Partner
T.N.R.Aravindran,
No.283, Muthaiah Nagar,
Annamalai Nagar,
Chidambaram-608 002.

..Petitioner in
W.Ps.5148 & 5149 of 2017

New Doss Creations,
Represented by its Proprietor,
G.Ramesh,
No.2, Engineering College Road,
Chidambaram Trade Centre,
Annamalai Nagar,
Chidambaram-608 001.

..Petitioner in
W.Ps.5150 & 5151 of 2017

Vs

1. Commercial Tax Officer (CT),
   Chidambaram-II Assessment Circle,
   Chidambaram-608 001.

2. Commercial Tax Officer (Enf)
   Group-II, Virudhachalam,
   Virudhachalam,
   Cuddalore.

..Respondents in
W.Ps.5148 and 5149/2017

Deputy Commercial Tax Officer (CT),
Chidambaram-II Assessment Circle,
Chidambaram-608 001.

..Respondent in
W.Ps.5150 and 5151/2017

Prayer in W.P.No.5148/2017:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent herein TIN/33054462937/2013-14 dated 11.08.2016 and quash the same and direct the respondent to redo the assessment after giving personal hearing.

Prayer in W.P.No.5149/2017:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent TIN/33054462937/2014-15 dated 29.07.2016 and quash the same and direct the respondent to redo the assessment after giving personal hearing.

Prayer in W.P.No.5150/2017:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent TIN/33484462652/2014-15 dated 29.04.2016 and quash the same and direct the respondent to redo the assessment after giving personal hearing.

Prayer in W.P.No.5151/2017:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent TIN/33484462652/2015-16 dated 04.05.2016 and quash the same and direct the respondent to redo the assessment after giving personal hearing.

For Petitioner in all W.Ps : Mr.K.Sankaran

For Respondents in all W.Ps : Mr. K.Venkatesh Government Advocate

ORDER

All these writ petitions are filed challenging the order of assessment made by the respondent based on the web report.

2.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent.

3.It is the contention of the learned counsel for the petitioners that the Assessment Officer has passed the impugned order of assessment without furnishing the details of the web report collected and relying on the same for making such order of assessment. The very same issue was considered by this court in a batch of writ petitions in W.P.No.105 of 2016 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."

4.Perusal of the said decision would show that the Assessing Officer has to redo the work in accordance with the directions issued therein, by evolving a centralised mechanism exclusively to deal with the cases of mismatch. Applying the above said decision to the case on hand, all these writ petitions are allowed and the impugned orders of assessment are set aside. Consequently, the matter is remitted back to the Assessing Authority to redo the exercise in accordance with the directions issued by this court in W.P.No.105 of 2016, etc., dated 01.03.2017. No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. Commercial Tax Officer (CT),
   Chidambaram-II Assessment Circle,
   Chidambaram-608 001.
2. Commercial Tax Officer (Enf)
   Group-II, Virudhachalam,
   Virudhachalam,
   Cuddalore.
3. The Deputy Commercial Tax Officer (CT),
   Chidambaram-II Assessment Circle,
   Chidambaram-608 001.

+4cc to Mr.R.Natarajan,Advocate,S.R.No.16183,16184,16182,16185
+2cc to the Government Pleader(Taxes),S.R.No.16334,16336

W.P.Nos.5148 to 5151/2017

nmi(co)
rmp(27/03/17)