

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAVICHANDRABAABU

W.P.No.7177 of 2017
and
W.M.P.No.7801 of 2017

M/s.A.S.P. Traders
rep. by its Proprietor,
P.Asaithambi,
Masthan Pillai Street,
Mannargudi,
Tiruvarur District.Petitioner

Versus

The Commercial Tax Officer,
Mannargudi Assessment Circle,
Mannargudi,
Tiruvarur District. ...Respondent

Prayer: Writ petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the respondent in TIN No.33033862421/2010-2011 dated 11.01.2017 and the consequential order dated 28.02.2017 and quash the same as illegal, arbitrary and against the principles of natural justice.

For Petitioner : Mr.K.Soundararajan

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

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, as the issue involved in this case is covered by the decision of this Court in a batch of cases made in W.P.No.105 of 2016 etc., dated 01.03.2017, in favour of the petitioner.

2. The petitioner is aggrieved against the order of assessment dated 11.01.2017 issued by the respondent, based on the details obtained from the Web Report.

3. Learned counsels appearing on both sides submitted that the issue involved in this case is squarely covered by the above decision of this Court wherein the learned Judge has considered the assessment passed based on the Web reports and consequently, found that the authorities in such cases have to evaluate a centralized mechanism exclusively to deal with the cases of mismatch. In the above said decision, the learned Judge has observed at paragraph Nos.56 to 58 as follows:

56.The procedure adopted under the Maharashtra 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 fashion 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 Maharashtra, 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. Since both sides have admitted that the above decision is squarely applicable to the present case as well, this writ petition is allowed and the impugned order of assessment is set aside and the matter is remitted back to the Assessing

Authority, namely, the respondent for considering the matter afresh and pass fresh order of assessment after following the guidelines/ directions issued in the above said decision of this Court. The respondent shall also give personal hearing to the petitioner before finalising the order of assessment. The entire exercise shall be completed by the respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

vsi

To
The Commercial Tax Officer,
Mannargudi Assessment Circle,
Mannargudi,
Tiruvallur District.

+1cc to Mr.K. Soundarajan, Advocate Sr. 19015
+1cc to the special Government Pleader,
High Court, Madras Sr. 19050

W.P.No.7177 of 2017

VGII (CO)
VR(06/04/2017)

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