IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.6195 of 2017
and
W.M.P.No.6681 of 2017

A.V.Palanisamy ...Petitioner

Vs.

The Commercial Tax Officer,
Chithode Circle,
Erode. ....Respondent

Petition filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certioriari to call for the records of the case relating to impugned Notice in TIN -33053060220/2015-16 dated 15.02.2017 issued by the respondent herein and to quash the same.

For Petitioner ... Mr.T.Ramesh

For Respondent ... Mr.K.Venkatesh,
Government Advocate.

O R D E R

Mr.K.Venkatesh, learned Government Advocate, takes notice on behalf of the respondent. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the notice dated 15.02.2017 calling upon the petitioner to file his objection, if any, to the proposal.

3. According to the respondent, the petitioner had effected taxable sale to the extent of Rs.1,11,98,331/- during 2015-16 as per the details given in the impugned notice, while he had reported the total taxable turn over of Rs.7,100/- in Form-I return filed upto September 2015.

4. Learned counsel for the petitioner submitted that the impugned notice is not in accordance with the guidelines prescribed by this Court in a recent decision made in W.P.No.105/2016 etc. batch dated 01.03.2017. Therefore, he contended that the matter has to be remitted back to the respondent for re-doing the exercise as per the directions issued by this Court in the above said batch of cases.

5. Mr.K.Venkatesh, learned Government Advocate submitted that the since the details furnished in the notice contains some particulars of the sale effected during the relevant period, the petitioner can very well approach the respondent and make his objections.

6. Heard both sides.

7. There is no dispute to the fact that the impugned notice was issued on verification of the Web Report. It is also not in dispute that in similar matters where the similar notice was questioned before this Court in W.P.No.105/2016 et5c., the learned Judge of this Court while disposing the above batch of cases, has found that the centralised mechanism has to be adopted for ascertaining the quantum of tax payable. At paragraph Nos.56 and 57 of the said order, learned Judge has 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.

8. I find that the above decision is squarely applicable to the present case as well. Therefore, by applying the above said decision, this writ petition is allowed and the impugned notice is set aside and the matter is remitted back to the respondent for re-doing the exercise in accordance with the direction issued in the above said batch of cases. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer,
Chithode Circle,
Erode.

+1cc to Mr.T.Ramesh, Advocate Sr.16105
+1cc to the Special Government Pleader Sr.16020

W.P.No.6195 of 2017

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srg 17/03/2017