IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.8255 to 8259 of 2017
&
W.M.P.Nos. 9015 to 9019 of 2017

M/s. Pranav Foundation Private Ltd.,
Rep.by its Authorised Signatory,
No.4/7, Rangamannar Street,
Perambur,
Chennai - 600 082. ...Petitioner
(in W.P.Nos.8255 to 8259 of 2017)

Vs.

Commercial Tax Officer,
Perambur Assessment Circle,
Chennai - 600 099.
...Respondent
(in W.P.Nos.8255 to 8259 of 2017)

Prayer:

Writ Petitions No. 8255 to 8259 of 2017 filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent and to quash the assessment proceedings in TIN No.33861043581/2010-11 in WP.No.8255 of 2017, TIN No.33861043581/2011-12 in WP.No.8256 of 2017, TIN No.33861043581/2012-13 in WP.No.8257 of 2017, TIN No.33861043581/2013-14 in WP.No.8258 of 2017, TIN No.33861043581/2014-15 in WP.No.8259 of 2017, dated 02.03.2017 as illegal and direct the respondent to furnish the details of informations obtained from the departmental Website for the mismatch details and to follow the orders of the Madras High Court orders in mismatch batch cases passed in W.P.No.105/2016 dated 01.03.2017 and others, and also as per the decision of Supreme Court in the case law reported in 109 STC 439 for the retrospective cancellation of registration of sellers and to provide an opportunity of personal hearing.

For Petitioner : Mr. C.Baktha Siromoni
For Respondent : Mr. K.Venkatesh
Government Advocate

COMMON ORDER

All these writ petitions are filed challenging the orders of assessment passed in respect of assessment years 2010-11 to 2014-15. It is stated that the impugned assessment orders were passed based on two issues viz., details obtained from the Web report and the purchases were made from the dealers, whose registration was cancelled, which according to the petitioner retrospectively.

2. The learned counsel for the petitioner submitted that insofar as the issue with regard to mismatch is concerned, the same is covered by the decision of this Court made in W.P.No.105/2016 etc., dated 01.03.2017. Insofar as the other issue, it is contended by the learned counsel for the petitioner that retrospective cancellation of the registration of the dealers cannot be put against the petitioner to pass the orders of assessment.

3. The learned Government Advocate submitted that the major issue involved in these assessment relates to mismatch based on Web report. Thus, he fairly admitted that the said issue is covered by the above decision made by this Court in W.P.No.105/2016 etc. dated 01.03.2017. Insofar as the second issue is concerned, it is submitted by the learned Government Advocate, that if the cancellation of registration of the dealers had taken place retrospectively, the same would be considered by the Assessing Officer.

4. Heard both sides.

5. Insofar as the first issue viz., mismatch is concerned, it is admitted by both sides that the same is covered by the above decision of this Court, wherein Para No. 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.
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> 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.

6. Insofar as the second issue is concerned, as rightly pointed out by the learned Government Advocate, the Assessing Officer has to find out, as to whether the cancellation of registration was made retrospectively and if so, whether the petitioner can be imposed with tax liability. Therefore, for both purpose the matter has to be remitted back to the Assessing Officer for fresh consideration.

7. Accordingly, all these Writ Petitions are allowed and the impugned orders of assessment are set aside. Consequently, the matter is remitted back to the Assessing Officer to pass fresh orders of assessment after following procedures / guidelines issued in W.P.No.105/2016 etc., dated 01.03.2017, insofar as the issue relating to mismatch is concerned. Insofar as other issue, the Assessing Officer shall consider the said issue in the light of the orders already passed by this Court as well as the Hon'ble Supreme Court on that issue. The petitioner also should be given personal hearing, before finalizing the assessment. Such exercise shall be completed by the Assessing Officer within

a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mk/at

To

The Commercial Tax Officer,
Perambur Assessment Circle,
Chennai - 600 099.

+1cc to the Government Pleader, S.R.No.24097

W.P.Nos.8255 to 8259 of 2017

W.M.P.Nos. 9015 to 9019 of 2017

NM(CO)
RS(26/04/2017)