IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU.

WRIT PETITION Nos.4262 and 4263 of 2017
and
WMP Nos.4421 and 4422 of 2017

M/s.Santhosh & Co.,
Rep. By its Proprietrix,
Ms.Malarvizhi,
No.38, Nagalapuram Road,
Uthukottai T.K.,
Tiruvallur 602 026. .. Petitioner in both W.Ps.

Vs.

1.The Assistant Commissioner (CT),
Tiruvallur Assessment Circle,
Tiruvallur 602 001.

2.The Joint Commissioner (CT),
Chennai (South) Division,
PAPJM Buildings, Greams Road,
Chennai 600 006. .. Respondents in both W.Ps.

Common Prayer:Writ petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of certiorarified mandamus to call for the records of the first respondent in TIN/33021724789/2014-15 and TIN/33021724789/2015-16 respectively dated 04.11.2016, quash the same and further direct the first respondent to pass fresh orders in after giving an opportunity of being heard without being influenced by the instructions of the second respondent in Rc.6336/2015/C2 dated 25.04.2016.

For Petitioner in both W.Ps. : Mr.V.Sundareswaran
For Respondents in both W.Ps. : Mr.K.Venkatesh Government Advocate

COMMON ORDER

Both these writ petitions are filed challenging the orders of assessment in respect of the Assessment Years 2014-2015 and 2015-2016.

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

3.Learned counsel for the petitioner stated that since these writ petitions are filed before this court, the petitioner has withdrawn the applications filed under section 84 with liberty to agitate the matter before this court.

4.The main contention raised in these writ petitions is that the orders of assessment passed by the Assessing Authority based on web report are not in accordance with the procedure/directions issued by this court in W.P.No.105 of 2016, etc., batch cases dated 01.03.2017. It is further contended by the learned counsel for the petitioner that the Assessing Authority has not furnished the details of such web report to the petitioner and therefore, it violates the principles of natural justice.

5.Learned Government Advocate is not disputing the fact that the issue involved in these cases is covered by the decision made by this court in the above said batch of cases.

6.A perusal of the said order passed by this court in the said batch would show that the Assessing Authorities were directed to follow certain procedure and guidelines stipulated therein in the cases of mismatch, by evolving a centralised mechanism. Paragraph Nos.56 to 58 of the above said order reads 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."

7.Considering the fact that the issue involved in these cases are covered by the above decision, I am of the view that the petitioner is also entitled to similar relief. Accordingly, both these writ petitions are allowed and the impugned orders of assessment are set aside. Consequently, the matter is remitted back to the Assessing Authority viz., the first respondent for redoing the assessment after following the guidelines/directions issued by this court in the above said batch of cases and also by affording an opportunity of hearing to the petitioner. Such exercise shall be done by the first respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vri

To

1.The Assistant Commissioner (CT),
Tiruvallur Assessment Circle,
Tiruvallur 602 001.
2.The Joint Commissioner (CT),
Chennai (South) Division,
PAPJM Buildings, Greams Road,
Chennai 600 006.

+2cc to Mr.Sundareswaran, Advocate, S.R.No.21971
+1cc to the Government Pleader, S.R.No.21603

GJ(CO)
RS(19/04/2017)