IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.04.2017

CORAM

THE HONOURABLE Mr. JUSTICE K. RAVICHANDRABAABU

W.P.No. 10331 of 2017
and
W.M.P.No. 11263 of 2017

Tvl. Shri Ramana Medicals Agencies Private Limited,
Represented by its Director,
K.S. Shankar,
No. 8/156, Manimegalai Street,
Advaidha Ashramam Road,
Salem - 636 004. ...Petitioner

Versus

The Assistant Commissioner (CT),
Salem Town West Circle,
Salem. ...Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorari calling for the records on the files of the respondent in TIN. No. 33782823769/ dated 03.08.2016 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr. R. Senniappan

For Respondent : Mr. K. Venkatesh,
Government Advocate

O R D E R

The petitioner is aggrieved against the order of assessment dated 03.08.2016 passed in respect of three assessment years 2012-13 to 2014-15.

2. Mr.K.Venkatesh, learned Government Advocate takes notice for the respondent and by consent the main writ petition is taken up for final disposal.

3. The grievance of the petitioner before this Court is as follows:

(a) The Assessing officer erred in passing a consolidated assessment order in respect of those three assessment years instead of passing separate orders discussing the issue involved in each assessment year and giving a finding thereon.

(b) The Assessment Officer has not considered the reply submitted by the petitioner and thus, the cryptic order of assessment without there being any discussion on the objections and findings rendered thereon, cannot be sustained.

(c) Even otherwise, the two issues involved in this case, namely, the assessment based on Web report and the ITC reversal under Section 19(2)(v)of the Tamil Nadu VAT Act, are covered by the decisions of this Court in favour of the petitioner.

4. By contending so, learned counsel for the petitioner submitted that the impugned assessment order has to be set aside and the respondent is to be directed to redo the assessment.

5. Learned Government Advocate, though submitted that the impugned assessment order was passed after considering the objections raised by the petitioner, has however, submitted that the two issues involved in the case are already covered by the decisions rendered by this Court.

6. Heard both sides.

7. Perusal of the impugned assessment order would show that the Assessing Authority, though referred to the reply given by the petitioner in the reference column, has however, failed to discuss as to what are those objections and how those objections are overruled, by giving a detailed consideration of facts and findings rendered thereon. Therefore, it is evident on the face of the assessment order that the Assessing Authority has mechanically passed the order of assessment, that too, by consolidating the same in respect of three assessment years, without there being any independent and separate discussion of the issues, facts and the objections raised by the petitioner in respect of each assessment year.

8. Admittedly, the two issues involved in this case are covered by the decision of this Court. The first issue namely, the reliance placed on web site report for passing the order of assessment has already been dealt with and decided in W.P.No.105/2016 etc. batch dated 01.03.2017. In the said decision, this Court at paragraph No.56 to 58 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.
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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.

Therefore, it is for the Assessing Officer to consider the said issue and redo the assessment based on the above guidelines/ observations made by this Court. Insofar as the other issue namely, the reversal of ITC credit under Section 19(2)(v) is concerned, the said issue is also covered by the decision of this Court made in W.P.No.7969/2014 dated 06.02.2017. Therefore, on both the issues, the Assessing Officer has to redo the assessment in the light of the orders passed by this Court as stated supra. Accordingly, the writ petition is allowed and the impugned order of assessment is set aside. Consequently, the matter is remitted back to the Assessing Officer for redoing the assessment by following the guidelines/directions issued by this Court in W.P.No.105/2016 dated 01.03.2017, also by following the decision made in W.P.No.7969/2014 dated 06.02.2017. The petitioner should also be given an opportunity of personal hearing before passing the Assessment order. The Assessing Officer shall pass such order of assessment individually in respect of each assessment year within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

vsi

To
The Assistant Commissioner (CT),
Salem Town West Circle, Salem.

+1cc to Mr.R.Senniappan,Advocate sr.25106

+1cc to The Special Government Pleader sr.25036

W.P.No. 10331 of 2017
and
W.M.P.No. 11263 of 2017

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