IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.7286 of 2017
and
WMP.No.7941 of 2017

M/s.Adithya Polymers
Rep. by its Partner
Mr.N.Dhuraiswami ... Petitioner

Vs.

The Commercial Tax Officer
Bhavani Assessment Circle,
Bhavani, Erode Circle. ... Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the respondent in TIN No.33873225445/2013-2014 dated 29.09.2016 and quash the same as illegal, arbitrary and against the provisions of the Act.

For Petitioner : Mr.K.Soundararajan

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

O R D E R

Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Tax), takes notice for the respondent. By consent of the parties, the main writ petition itself is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order of assessment dated 29.09.2016 in respect of the assessment year 2013-2014.

3. Heard both sides.

4. The grievance of the petitioner is that when the impugned order of assessment was made based on the Web Report, the Assessing Authority is not justified in passing the impugned

order of assessment, without furnishing the details of such report and without conducting any enquiry at all levels.

5. The learned counsel appearing for the petitioner further pointed out that this Court already considered similar issue with regard to the assessment based on web report and found that the assessment order cannot be passed in such a manner and on the other hand, the Assessing Authority has to adopt a centralized mechanism exclusively to deal with the cases of mismatch. The said decision made in WP.No.105 of 2016 etc., dated 01.03.2017 has been strongly relied on by the learned counsel for the petitioner.

6. The learned Additional Government Pleader (Tax) is not disputing the fact that the issue involved in this case is covered by the above decision of this Court. Therefore he submitted that the same order can be passed in this case as well. In the said order, the learned Judge had observed in paragraph 56, 57 and 58 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 this case is covered by the above decision made by this Court and considering the fact that the petitioner is also entitled for similar relief in this case, this writ petition is allowed and the impugned order of assessment is set aside. Consequently, the matter is remitted back to the Assessing Authority to redo the assessment after following the procedures/ directions issued by this Court in the above said batch of cases. Needless to say that the Assessing Authority will also provide an opportunity of personal hearing to the petitioner before finalizing the assessment. Such exercise shall be done by the Assessing Authority 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

mk

To
The Commercial Tax Officer
Bhavani Assessment Circle,
Bhavani, Erode Circle.

+1cc to Mr.K. Sundarajan, Advocate Sr, 19014
+1cc to Special Government Pleader Sr. 18738

W.P.No.7286 of 2017

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