IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.6381 to 6386 of 2017
and
W.M.P.Nos.6884 to 6889 of 2017

Madras Engineering Industries Private Ltd.,
represented by its Director,
Ms.Priya Sriram
C-6, Industrial estate,
Ambattur,
Chennai- 600 058 .. Petitioner in all the writ petitions

Vs.

The Assistant Commissioner
(CT)
Anna Nagar Assessment Circle,
1-B, Lakshmipuram 2nd Street,
Villivakkam,
Chennai - 600 049 .. Respondent in all the writ petitions

Writ petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records on the files of the respondent in TIN:33861320031/2010-11, TIN:33861320031/2011-12, TIN:33861320031/2012-13, TIN:33861320031/2013-14, TIN:33861320031/2014-15 and TIN:33861320031/2015-16 dated 07.02.2017 and quash the same.

सत्यमेव जयते

For Petitioner : Mr.N.Inbarajan
For Respondent : Mr.K.Venkatesh,
Government Advocate

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COMMON ORDER

All these Writ Petitions are filed challenging the order of assessment pertaining to the assessment years 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015 and 2015-2016.

2. Mr.K.Venkatesh, learned Government Advocate takes notice for the respondent and by consent of parties, the main writ

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petitions are taken up for final disposal, since the issue involved herein is covered by the decision of this Court in a batch of cases made in W.P.No.105 of 2016 etc. dated 01.03.2017.

3. The contention of the petitioner in all these writ petitions, in common, is that the reversal of ITC was made by the respondent without providing a personal hearing and without providing further time to furnish details for the remaining turn over, for which, the reversal of ITC was determined by the respondent. The learned counsel for the petitioner pointed out that the very show cause notice itself was issued based on VAT Audit Report and Web Report. He further submitted that when petitioner has filed their objection and furnished certain details so far collected from their dealers, the respondent erred in passing impugned orders of assessment, only by partly accepting the claim of the petitioner, however, by not granting further time in respect of the remaining ITC, especially, when the petitioner has sought for personal hearing in their reply to the show cause notice. Therefore, he contended that the impugned orders are passed in violation of principles of natural justice. He also submitted that the respondent is duty bound to conduct the enquiry in pursuant to the explanations and details furnished by the petitioner, more particularly, when the assessment orders were passed on the Web Report as well, in view of the recent decision made by this Court in the batch of cases made in Writ Petition No.105 of 2016 etc. batch, dated 01.03.2017.

4. The learned Government Advocate appearing for the respondents submitted that the respondent has passed impugned order of assessment after considering the explanation and materials furnished by the petitioner and therefore, it cannot be said that the principles of natural justice is violated. However, he is fair enough to accept the position that the assessment orders were passed based on the Audit Report as well as Web Report. He also accepted the position that insofar as assessment orders made based on the Web Report is concerned, the decisions made in the batch of cases by this Court in W.P.No.105 of 2016 etc. dated 01.03.2017 would apply to the present facts and circumstances as well.

5. Heard the learned counsel for the Petitioner and the learned Government Advocate appearing for the respondent.

6. It is not in dispute that the impugned assessment orders were passed based on the VAT Audit Report as well as Web Report. No doubt in these cases, certain details of Web Report were furnished by the respondent and the petitioner has also furnished the reply to the same with certain details. However, from the perusal of the reply dated 18.10.2016, it is seen that they also sought for personal hearing to explain the facts as stated in their reply. Admittedly, no personal hearing was given to the petitioner and on the other hand, the respondent had

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chosen to pass the impugned order of assessment, partly by disallowing certain extent of ITC claim. The learned counsel for the petitioner stated that if had there been an opportunity of personal hearing, the petitioner would have placed materials before the respondent as to how they are justified in seeking ITC reversal in respect of the remaining amount which was disallowed by the respondent in the impugned proceedings. Apart from the above said facts, it is also very clear that this Court in W.P.No.105 of 2016 etc. batch case has pointed out as to how the Department has to deal with the matter arising out of the Web Report. At paragraph Nos.56 to 58 of the said order, this Court has observed as to how the Department has to proceed by evaluating the centralized mechanism exclusively to deal with the cases of mismatch. Paragraph Nos.56 to 58 of the 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

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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.

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7. Since this Court has laid down the principles as to how those cases relating to the mismatch based on the Web Report has to be dealt with, I find that the respondent herein is bound to follow the said order and redo the assessment in this case as well. Accordingly, all these writ petitions are allowed and the impugned orders are set aside. Consequently, the matter is remitted back to the respondent 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 respondent will also provided an opportunity of personal hearing to the petitioner before finalising the assessment. Such exercise shall be done by the respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner
(CT)
Anna Nagar Assessment Circle,
1-B, Lakshmipuram 2nd Street,
Villivakkam, Chennai - 600 049

+1 CC to Mr. N.Inbarajan, Advocate sr 16405
+1 CC to Spl Govt. Pleader sr 16631

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W.P.No.6381 to 6386 of 2017 of 2017

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