IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.6517 to 6520 of 2017
And
W.M.P.Nos.7023 to 7026 of 2017

M/s.A.P.Constructions India Private Limited
Rep by its Authorised Signatory

... Petitioner in all the W.Ps.

Vs.

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

... Respondent in all the W.Ps.

Common Prayer:

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN 33251043771/2010-11, TIN 33251043771/2011-12, TIN 33251043771/2013-14 and TIN 33251043771/2014-15 respectively, dated 28.02.2017 and quash this order as illegal and direct the respondent to pass fresh TNVAT Act as per the ratio of the decision of the Apex court in the case of M/s.Builders Association of India reported in 73 STC 370 and also as per Article 366 (29A)(b) of the Constitution of India and to decide the mismatch issue in light of the decision of the batch cases in W.P.105/ 2016 dated 01.03.2017 and other relating to M/s.JKM Graphics Solutions Pvt Ltd & Others Vs. Commercial Tax Officer, Vepery Assessment Circle and others.

For Petitioner : Mr.C.Baktha Siromoni

For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader (Taxes)

C O M M O N   O R D E R

Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes) takes notice for the respondent and by consent of parties, the main writ petitions themselves are taken up for final disposal, at the admission stage, as the issue involved in these writ petitions is squarely covered by the decision of this Court passed in W.P.No.105 of 2016 etc. batch, dated 01.03.2017.

2.The petitioner is one and the same in all these writ petitions. The petitioner is aggrieved against the order of assessment passed in respect of the assessment years 2010-11, 2011-12, 2013-14 and 2014-15.

3.Heard the submissions made by the learned counsel for the petitioner and the learned Additional Government Pleader (Taxes) appearing for the respondent.

4.The main contention of the writ petitioner in all these writ petitions is that the orders of assessment based on web report are not sustainable in view of the fact that such assessment was made not in accordance with the guidelines/ directions issued by this Court in W.P.105 of 2016 etc. batch dated 01.03.2017. It is further contended that the respondent has not afforded personal hearing to the petitioner though such request was specifically made while filing their objections.

5.The learned Additional Government Pleader (Taxes) appearing for the respondent though submitted that the objections raised by the petitioner were considered by the Assessing Authority, has however not disputed the fact that the issue involved in these cases is covered by the decision made in W.P.105 of 2016 etc. batch, dated 01.03.2017.

6.This Court while considering the assessments made based on web report, has passed a detailed order in W.P.No.105 of 2016 etc. batch, dated 01.03.2017, wherein, at paragraph Nos.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.

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.This Court has considered similar writ petitions and also found that the order passed in the above said batch of cases is applicable to those cases. The learned Judge has observed as to how the cases relating to the order of assessment based on web report are to be dealt with, by adopting a centralized mechanism. Moreover, this Court has also found that the order of assessment came to be passed without affording an opportunity of personal hearing to the petitioner. Therefore, this Court is satisfied that the matter needs interference.

8.Accordingly, the writ petitions are allowed and the impugned orders of assessment are set aside by following the order passed in W.P.No.105 of 2016 etc. batch, dated 01.03.2017. Consequently, the matter is remitted back to the Assessing Authority for passing fresh orders of assessment by following the guidelines/ directions issued by this Court in the above said batch of cases. Needless to say that the Assessing Officer is also to provide an opportunity of personal hearing to the petitioner, before finalising the assessment. Such exercise shall be done by the Assessing Officer, within a period of eight weeks from the date of receipt of a copy of this order.

9.The writ petitions are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

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

+1cc to the Special Government Pleader Sr.17273
+1cc to Mr.C.Bakthasiromani, Advocate Sr.17330

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srg 7/4/2017