IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:- 17.03.2017

CORAM:
**THE HONOURABLE MR.JUSTICE RAVICHANDRABAABU**

W.P.No.No.6566 of 2017
and
W.M.P.Nos.7062 and 7063 of 2017

M/s. Sri Amman Agencies
Rep. by its prop: L. Yuvaraj,
No.22, M.C. Road,
IELC Complex,
Ambur -635 802,
Vellore District. ...Petitioner

Versus

Commercial Tax Officer,
Ambur Assessment circle,
Ambur,
Vellore District. ...Respondent

Prayer: Writ of Certiorari petition filed under Article 226 of the Constitution of India, calling for the records on the file of the Respondent in its impugned proceedings made in TIN No. 33424263447/2013-14 dated 31.12.2015 and quash the same.

For Petitioner : Mrs.R.Hemalatha

For Respondents : Mr.K.Venkatesh,
Government Advocate.

**O R D E R**

The petitioner is aggrieved against the order of assessment dated 31.12.2015.

2. Mr.K.Venkatesh, learned Government Advocate takes notice for the respondent and by consent of the parties, the main writ petition itself is taken up for final disposal at the admission stage, in view of the fact that the issue involved in this case is squarely covered by the decision of this Court made in batch of cases in W.P.No.105/2016 etc. dated 01.03.2017

3. The petitioner is challenging the order of assessment, mainly by contending that the Assessing Officer relied on the Web Report and passed the impugned order without furnishing all the details and conducting thorough enquiry with the dealers. It is further contended that the penalty under Section 22(4)of Tamil Nadu VAT act was imposed without affording an opportunity of personal hearing to the petitioner. On these two grounds, the petitioner challenged the impugned order of assessment. There is no dispute to the fact that this Court, in the above said batch of cases, has dealt with the matter in respect of the assessments made based on Web Report and found that the centralised mechanism has to be evolved for passing such order of assessment. The relevant observation made at paragraph Nos. 56 to 58 in W.P.No.105/2016 etc. dated 01.03.2017 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.*

4. Therefore, I find that the above decision made in the batch of cases is squarely applicable to the present case as well. Insofar as the contention raised by the petitioner that the assessee was not given personal hearing before imposing penalty under Section 22(4) of Tamil Nadu VAT Act is concerned, a perusal of the order of assessment does not indicate that the petitioner was given any opportunity of personal hearing before passing the same.

K.RAVICHANDRABAABU,J.

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5. Considering all these aspects, I am of the view that the matter needs to be remitted back to the Assessing Authority for re-doing the exercise after following the procedures/directions stipulated in the order passed in W.P.No.105/2016 etc. dated 01.03.2017. Accordingly, this writ petition is allowed and the impugned order of assessment dated 31.12.2015 is set aside and the matter is remitted back to the Assessing Authority to redo the exercise once again after giving an opportunity of hearing to the petitioner and also by following the procedures/directions stipulated in the said order. 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.

**17.03.2017**

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To
The Commercial Tax Officer,
Ambur Assessment circle,
Ambur,Vellore District.