

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:- 02.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.13636 of 2017

and

W.M.P.Nos.14822, 14823 & 14824 of 2017

M/s. V.B.K.Cashews,
Rep. By its Proprietor,
Mr. Balamurugan.Petitioner

Versus

1. The Deputy Commercial Tax Officer,
Panruti (Rural) Assessment Circle,
Panruti and another.
2. The Branch Manager,
Canara Bank,
Marungur.Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Certiorari, calling for the records of the first respondent in his proceedings in TIN 33476277479/2014-2015, quash the assessment order dated 28.10.2016 in the light of the judgment of this Court dated 01.03.2017 made in W.P.No.105/2016 and other cases.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.K.Venkatesh,
Government Advocate for R1

WEB COPY
O R D E R

Mr.K.Venkatesh, learned Government advocate takes notice for the first respondent and by consent of the parties, the main writ petition itself is taken up for final disposal, as the second respondent is only a formal party.

2. The petitioner is aggrieved by the order of assessment dated 28.10.2016 passed in respect of the assessment year 2014-2015. The Assessing Officer after receiving the notice of proposal, passed the order of assessment solely based on the information collected from the departmental website.

3. The learned counsel for the petitioner submitted that the procedure adopted by the Assessing Officer to conclude the assessment is erroneous, especially when this Court has recently stipulated certain guidelines/directions to be followed by the Assessing Officer while considering the assessment based on the issue of mismatch. In support of the said contention, the learned counsel sought to rely on the order passed in W.P.No.105 of 2016 etc. dated 01.03.2017

4. The learned Government Advocate though accepted that the issue involved in this case is covered by the above said decision of this Court, however has submitted that the petitioner has not given a reply to the notice of proposal and therefore, the Assessing Officer is left with no other option except to pass the order of assessment.

5. Heard both sides.

6. It is not in dispute that the issue involved in this case namely mismatch is covered by the decision of this Court made in W.P.No.105 of 2016 etc., dated 01.03.2017. The learned counsel for the petitioner submitted that non-filing of the reply to the notice was neither intentional nor deliberate and on the other hand, the petitioner repeatedly approached the first respondent in person and sought to justify their claim. Needless to say that once the notice is issued, it is for the petitioner to file a reply. Though the petitioner has not filed a reply in this case, considering the fact that the issue is covered by the above decision of this Court, this Court is of the view that the Assessing Officer has to re-do the assessment by following the guidelines/principles laid down in the above said decision, wherein at paragraph Nos.56 to 58, it has been observed as follows:

"56. The procedure adopted under the Maharashtra 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 Maharashtra, 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."

6. Considering all the above facts and circumstances and considering the fact that the quantum of tax involved in this case is also minimal, this Court is of the view that the petitioner should be given one more opportunity to place their objections and consequently, the Assessing Officer has to re-do the assessment in the light of the above said order passed by this court.

7. 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 re-doing the assessment in the light of the order passed by this Court in W.P.No.105 of 2016 etc., dated 01.03.2017. The petitioner is directed to give their objections within a period of two weeks

from the date of receipt of a copy of this order. On receipt of such objections, the Assessing Officer shall pass the order of assessment as stated supra, within a period of four weeks thereafter. It is stated by the learned counsel for the petitioner that the first respondent has attached the bank account of the petitioner maintained with the second respondent. Since this Court has set aside the order of assessment and remitted back the matter to the first respondent, the first respondent shall lift the bank attachment pending passing of fresh order of assessment as directed supra. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mk/cgi
To

The Deputy Commercial Tax Officer,
Panruti (Rural) Assessment Circle,
Panruti.

+1cc to Mr.P.Rajkumar, Advocate Sr.39387
+1cc to the Government Pleader Sr.39661

W.P.No.13636 of 2017

srg 08/06/2017

सत्यमेव जयते

WEB COPY