IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.13686 & 13687 of 2017
and
W.M.P.Nos.14863 & 14864 of 2017

Tvl. Anil Enterprises,
Rep. by its Proprietrix
Mrs. C. Kanchan
No.69-2/23, Nagaier Street, Shevapet
Salem - 636 001. .. Petitioner
(in WP.Nos.13686 & 13687 of 2017)

Vs.

The Assistant Commissioner (CT),
Shevapet Assessment Circle,
O/o. The Assistant Commissioner (CT)
Bazaar Circle, Salem.
.. Respondent
(in WP.Nos.13686 & 13687 of 2017)

Common Prayer: Writ petitions Nos.13686 & 13687 of 2017 filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records relating to the proceedings of the respondent in TIN Nos.33102641492/2014-15 and 33102641492/2015-16, dated 03.05.2017 and quash the same.

For Petitioner: Mr.S.Raveekumar
For Respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader

COMMON ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader takes notice for the respondent and by consent of the parties, the main writ petition itself is taken up for final disposal.

2. These writ petitions are filed against the orders of assessment dated 03.05.2017 passed in respect of the assessment years 2014-2015 and 2015-2016. It is admitted by both sides, that the issue involved in both the cases namely difference in purchase as per Annexure-II of the other end dealer and

difference in sales as per Annexure-I of the other end dealer, broadly speaking as the issue of mismatch is covered by the decision of this Court made in W.P.No.105/2016 etc., dated 01.03.2017. A perusal of the above said decision, more particularly, at para Nos.56 to 58 would show that this Court has issued certain guidelines/directions to be followed by the Assessing Officer while dealing with the mismatch issue. The observations at para Nos.56 to 58 read 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."

3. Considering the above stated facts and considering the admitted position that the issue involved in these cases are covered by the above said decision of this Court, these writ petitions are allowed and the impugned orders of assessment are

set aside. Consequently, the matter is remitted back to the Assessing Officer for re-doing the assessment by following the guidelines/procedures stipulated in W.P.No.105 of 2016 etc., dated 01.03.2017, after giving due opportunity of hearing to the petitioner. 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. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mk/cgi

To

The Assistant Commissioner (CT),
Shevapet Assessment Circle,
O/o. The Assistant Commissioner (CT)
Bazaar Circle, Salem.

+2 CCs to Mr.S. Ravi Kumar, Advocate sr 39457
+1 CC to Spl. Govt. Pleader sr 39658

W.P.Nos.13686 & 13687 of 2017

sp/8/6