IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2017

CORAM:

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.23990 of 2017
and
W.M.P.No.25300 of 2017

M/s.MSR Traders,
rep by its Proprietor,
No.52/22-1A,
Mohamed Pura 1st Street,
Ambur, Vellore District. ..Petitioner

Vs.

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

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the respondent and to quash the assessment proceedings in TIN No.33464264686/2015-16, dated 31.03.2017 as illegal and direct the respondent to provide all the details of informations obtained from the departmental Website for the alleged mismatch of purchases related to the petitioner and decide this case based on the recent decision of the batch cases of the Madras High Court and providing an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.C.Baktha Siromoni

For Respondent : Ms.Narmadha Sampath,
Special Government Pleader

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O R D E R

Heard Mr.Baktha Siromoni, learned counsel appearing for the petitioner and Ms.Narmadha Sampath, learned Special Government Pleader, who accepts notice for the respondent.

2. With the consent of the learned counsel on either side, this Writ Petition is taken up for disposal.

3. The petitioner is a registered dealer on the file of the respondent under the provisions of Tamil Nadu Value Added Tax, Act, 2006 (herein after referred as TNVAT Act). The petitioner is aggrieved by an order of assessment under Section 22(4) of the TNVAT Act for the Assessment year 2015-16.

4. The learned counsel appearing for the petitioner vehemently contended that the impugned assessment has been made in a utter disregard to the decision of this Court made in W.P.No.105 of 2016 [M/s. JKM Graphics Solutions Pvt limited & Others Vs. Commercial Tax Officer, Vepery Assessment Circle and others] dated 01.03.2017, wherein this Court has elaborately set out the procedure to be followed in the case where there is mismatch of the details furnished in the Annexure- I of the purchasing dealers with that of the Annexure - II of the selling dealers.

5. However, it is contended that the respondent failed to consider the manual returns for the two months in the year 2015 and the respondent had reversed the input tax credit without verifying the same. Therefore, it is submitted that one more opportunity may be given to the petitioner, to go before the Assessing Officer.

6. As rightly pointed out by the learned Special Government Pleader, the petitioner had due opportunity to go before the Assessing Officer. On a perusal of the impugned assessment order, it is seen that the petitioner was directed to produce the original purchase invoice, bank statement etc. However, the petitioner has failed to produce the same.

7. That apart, the respondent had noted that the petitioner had not filed monthly returns electronically for the months of June 2015 and August 2015 and therefore the respondent is justified in stating that the dealer is not eligible for deemed assessment provided under Section 22(2) of the Act.

8. Learned counsel for the petitioner submitted that the invoice wise details of the Input tax credit mismatch mentioned in the revision notice dated 29.07.2016, as well as the extract in the impugned assessment order does not give requisite details and several columns in the tabular statement have been left as blank or indicated as zero.

9. In my considered view, the first and foremost obligation which cast upon the dealer in terms of the provisions of the TNVAT Act is to file monthly returns. The explanation given by the petitioner for not being able to file monthly returns on account of the old age of the proprietor of the petitioner company hardly is not acceptable, as it appears that prior to that period the petitioner had been filing monthly returns electronically. The respondent is justified in stating

that the petitioner did not file the monthly returns hence, the dealer is not eligible for deemed assessment as provided under Section 22(2). If the petitioner wants any details from the respondent he could have very well appear before the respondent and sought for those details.

10. One more contention advanced by the learned counsel for the petitioner is that the petitioner is entitled to file Form WW, giving the details of all the transactions and the time limit for filing Form WW is till 30.12.2016 and well before the said cut off date, the revision notice dated 29.07.2016 could not have been issued. This contention could have been considered under normal circumstances, but not in the case of petitioner who has failed to file the monthly returns electronically.

11. Considering the fact that the assessment is sought to be completed based on the mismatch of details culled out from the official website, this Court is inclined to grant one more opportunity to the petitioner to go before the Assessing Officer subject to certain conditions.

12. Accordingly, there will be be a direction to the petitioner to pay 15% of the disputed tax within a period of three weeks from the date of receipt of copy of this order. If the petitioner complies with the condition, they will be entitled to seek for necessary details from the Assessing Officer . After getting the details with regard to the mismatch, the petitioner shall submit their objections by treating the impugned assessment order as a show cause notice, within a period of 15 days from the date on the which the information is furnished by the Assessing Officer. On receipt of the objections, the Assessing Officer shall re do the assessment in accordance with law, after affording an opportunity of personal hearing. On the other hand if the petitioner fails to comply with the condition, the benefit of this order shall not enure to the petitioner and it is open to the respondent to proceed in accordance with law.

13. Accordingly, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

The Commercial Tax Officer,
Ambur Assessment Circle,
Ambur,
Vellore District.

+1 C.C to M/S.C.BAKTHA SIROMONI, Advocate SR.NO.65938.

+1 C.C. To Spl.Govt.Pleader (Taxes), SR.NO.65732

W.P.No.23990 of 2017

AK (CO)
ADD 06.10.2017