IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.3752 of 2017
and
WMP.Nos. 3802 & 3803 of 2017

Tvl.J.S.Kumaran Traders
represented by its Proprietor,
No.40/84 B, Marakkanam Main Road,
Tindivanam-604 001 ... Petitioner

Vs.

The Deputy Commercial Tax Officer (CT)
Tindivanam. ... Respondent

Prayer:
Writ petition filed under Section 226 of the Constitution of India to call for the records on the files of the respondent in TIN-33674722265/2015-16 dated 31.10.2016 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Ganesh Kanna

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

The petitioner is aggrieved by the order of assessment dated 31.10.2016 passed in respect of the assessment year 2015-2016.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent.

3. The learned counsel appearing for the petitioner submitted that the only issue involved in this cases is mis-match and the said issue was already considered by this Court in W.P.No.105 of 2016 etc., dated 01.03.2017, wherein certain directions / guidelines are issued to the Assessing Officer to follow while dealing with the issue of mis-match. Therefore, he submitted that when the Assessing Officer in this case has not followed those procedures / guidelines, even before issuing the notice of proposal, failure to give a reply to the notice of proposal, will not absolve the liability of the Assessing Officer to pass the orders of assessment in accordance with the order passed by this Court in WP.No.105 of 2016 etc., dated 01.03.2017.

4. The learned Government Advocate appearing for the respondent submitted that since the petitioner has not utilized the opportunity by giving a reply to the show cause notice, the Assessing Officer is left with no other option, but to pass the assessment order.

5. It is not in dispute that the only issue involved in this matter is the mis-match and the said issue was already covered by the decision of this Court made in W.P.No.105 of 2016 etc., dated 01.03.2017. It is true that the petitioner has not utilized the opportunity by giving a reply to the notice of proposal. However, as pointed out by the learned counsel appearing for the petitioner, even before issuing the said notice of proposal, the Assessing Officer has to do some exercise as stipulated in the above said order passed by this Court in W.P.No.105 of 2016 etc., dated 01.03.2017. Therefore, there is no purpose in saying that the petitioner has not given a reply to the show cause notice. In any event, as the Assessing Officer has to re-do the assessment in the light of the order passed by this Court in W.P.No.105 of 2016 etc., dated 01.03.2017, this Court is of the view that the matter should be remitted back to the Assessing Officer for re-doing the assessment after giving an opportunity of hearing to the petitioner as well.

6. Accordingly, this 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, commencing from the issuance of the notice of proposal after following the procedures / guidelines issued by this Court in W.P.No.105 of 2016 etc., dated 01.03.2017. The whole exercise shall be completed by the Assessing Officer within a period of four weeks from the date of receipt of a copy

of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi

To

The Deputy Commercial Tax Officer (CT)
Tindivanam.

+1cc to the Special Government Pleader(Taxes), S.R.No.44042

W.P.No.3752 of 2017

NMI(CO)
CS/04/07/17