IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.14788 to 14790 of 2017
and
WMP.Nos. 16040 to 16042 of 2017

M/s Arul Store,
Represented by its Partner L. Varadharajan,
108/A5, Trichy Main Road,
Perambalur. ...Petitioner
(in WP Nos.14788 to 14790 of 2017)

Vs.

The Commercial Tax Officer,
Ariyalur Assessment Circle,
Commercial Tax Building,
Ariyalur. ...Respondent
(in WP Nos.14788 to 14790 of 2017)

Prayer:

Writ Petition No.14788 of 2017 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in TIN 33673602885/2010-11 dated 08.05.2017 and to quash the same as illegal, arbitrary and in violation of the principles of natural justice, and direct the respondent to pass assessment order afresh after affording a opportunity of being heard to the petitioner by considering the reply dated 28.02.2017 filed by the petitioner within such time as may be directed by this Hon'ble Court.

Writ Petition No.14789 of 2017 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in TIN 33673602885/2011-12 dated 08.05.2017 and to quash the same as illegal, arbitrary and in violation of the principles of natural justice, and direct the respondent to pass assessment order afresh after affording a opportunity of being heard to the petitioner by considering the reply dated 28.02.2017 filed by the petitioner within such time as may be directed by this Hon'ble Court.

Writ Petition No.14790 of 2017 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in TIN 33673602885/2012-13 dated 08.05.2017 and to quash the same as illegal, arbitrary and in violation of the principles of natural justice, and direct the respondent to pass assessment order afresh after affording a opportunity of being heard to the petitioner by considering the reply dated 28.02.2017 filed by the petitioner within such time as may be directed by this Hon'ble Court.

For Petitioner : Mr.A.Thiyagarajan
Senior Counsel for
Mr.S.Karunakar

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader (Tax)
(in WP Nos.14788 to 14790 of 2017)

C O M M O N O R D E R

Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Tax), takes notice for the respondent and by consent of the parties, these main writ petitions themselves are taken up for final disposal.

2. The petitioner is aggrieved by the orders of assessment dated 08.05.2017 passed in respect of the assessment years 2010-2011, 2011-2012 and 2012-2013.

3. Heard the learned Senior Counsel appearing for the petitioner and the learned Additional Government Pleader (Tax) appearing for the respondent.

4. The learned Senior Counsel appearing for the petitioner submitted that the only issue involved in these cases is mis-match and the said issue was already considered by this Court in WP.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 these cases 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 the light of the order passed by this Court in WP.No.105 of 2016 etc., dated 01.03.2017.

5. The learned Additional Government Pleader (Tax) 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 orders.

6. Heard both sides.

7. It is not in dispute that the only issue involved in these matters is the mis-match and the said issue was already covered by the decision of this Court made in WP.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 Senior 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 WP.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 WP.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.

8. Accordingly, 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, commencing from the issuance of the notice of proposal after following the procedures / guidelines issued by this Court in WP.No.105 of 2016 etc., dated 01.03.2017. The whole exercise shall be completed 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/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To
The Commercial Tax Officer,
Ariyalur Assessment Circle,
Commercial Tax Building,
Ariyalur.
+3cc to Mr.S.Karunakar,Advocate sr.42316
+1cc to Special Government Pleader sr.42267

W.P.Nos.14788 to 14790 of 2017

lrs(co)
ss(21/6/2017)