IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.15284 & 15285 of 2017
and
W.M.P.Nos.16570 & 16571 of 2017

TRR Automotive
Rep.by its Proprietor
T.R. Ramachandran
GST Road, Silavattam, Pakkam Post
Madurantakam ... Petitioner
(in WP.Nos.15284 & 15285 of 2017)

Vs.

The Commercial Tax Commissioner
Madurantakam Assessment Circle
No.15/9, Theradi Street
Madurantakam - 603 306 ... Respondent
(in WP.Nos.15284 & 15285 of 2017)

Common Prayer:

Writ petition Nos.15284 & 15285 of 2017 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the respondent passed in TIN Nos. 33471681813/2014-15 & 33471681813/2015-16, dated 20.4.2017 and quash the same and further direct the respondent to re-do the assessment in accordance with the law, by following the directions of the Hon'ble Court issued in respect of mismatch issue in its order in WP.No. 105/2016, dated 01.03.2017, respectively.

For Petitioner: Mr.N. Murali
(in WP.Nos.15284 & 15285 of 2017)
For Respondent : Mr.K.Venkatesh
Government Advocate
(in WP.Nos.15284 & 15285 of 2017)

C O M M O N O R D E R

Mr. K. Venkatesh, Government Advocate, takes notice on behalf of the respondent. By consent of the parties, these main writ petitions themselves are taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved by the orders of assessment passed in respect of the assessment years 2014-2015 and 2015-2016 dated 20.4.2017.

3. Heard both sides.

4. It is not in dispute that the issue involved in both the matters is mismatch and such issue is already covered by the decision of this Court in W.P.No.105/2016 etc., dated 01.03.2017. In the said decision, the learned Judge has directed the Assessing Officer to evaluate a centralised mechanism exclusively to deal with the cases of mismatch and to do some exercise, before issuing a notice. In the said order, at para Nos.56 to 58, it has been observed 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."

5. The learned Government Advocate is not disputing the fact that the Assessing Officer in this case has to re-do the assessment, by following procedures/guidelines issued in the above said order.

6. Considering the above stated facts and circumstances and considering the fact that the Assessing Officer has to re-do the assessment, in view of the above said decision of this Court, these writ petitions are allowed and the impugned orders are set side. Consequently, the matter is remitted back to the Assessing Officer to re-do the assessment commencing from the stage of issuing notice of proposal, after following guidelines/procedures issued by this Court in the above said order. The Assessing Officer shall also give personal hearing to the petitioner before finalizing the orders of assessment. 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/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mk /ms

To

The Commercial Tax Commissioner
Madurantakam Assessment Circle
No.15/9, Theradi Street
Madurantakam - 603 306

+1cc to the Government Pleader, S.R.No.43065

W.P.Nos.15284 & 15285 of 2017

SVI(CO)
RS(28/06/2017)