

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.15524 of 2017
and
W.M.P.No.16840 of 2017

Vision Hire Entertainments Pvt. Ltd.,
Represented by its Director
Plot #356, 1st Cross Street, Nehru Nagar,
Kottivakkam (OMR)
Chennai-600 096. Petitioner

Vs.

Assistant Commissioner (CT)
Adyar Assessment Circle,
No.46, Greenways Road, Chennai-600 028. Respondent

Prayer:

Writ petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the files of the respondent herein in TIN.No.33620960487/2013-14, culminating in the impugned order dated 09.12.2016 passed by the respondent in respect of TIN.No.33620960487/2013-14 demanding the reversal of ITC of Rs.62,450/- and penalty Rs.62450/- (totaling Rs.1,29,400 for 2013-2014) and quash the same.

For Petitioner: M/s.S.Gayathri

For Respondent : Mr.K.Venkatesh

Government Advocate

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O R D E R

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

2. The petitioner is aggrieved by the order of assessment passed in respect of the assessment year 2013-2014 dated

09.12.2016.

3. Heard both sides.

4. It is not in dispute that the issue involved in this case 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 Maharashtra 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 Maharashtra, 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, this writ petition is allowed and the impugned order is set aside. 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 order of assessment. 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 petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mk

To

The Assistant Commissioner (CT)
Adyar Assessment Circle,
No.46, Greenways Road, Chennai-600 028.

+1cc to Mr.L.Maithili, Advocate, S.R.No.43382
+1cc to the Government Pleader, S.R.No.43705

W.P.No.15524 of 2017

RR(CO)
RS(03/07/2017)