IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.17052 of 2017 &
W.M.P.No.18511 of 2017

M/s.Royal & Co,
Rep. by its Proprietor K.Ravi,
No.193/59, Mela Raja Veethi,
Mannargudi. ... Petitioner

Vs.

The Commercial Tax Officer,
Mannargudi Assessment Circle,
Mannargudi. ... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India to issue a WRIT OF CERTIORARIFIED MANDAMUS calling for the records in TIN No.33303861739/2010-11 dated 11.01.2017 and to quash the same as illegal, arbitrary and against the proviso Section 3(4)(a) and Section 28 of the TNVAT Act 2006 and direct the respondent to furnish the records relied in notice dated 12.12.2016 which lead him to make an revision of assessment including the opportunity of being heard to the petitioner within such time as may directed by this Court.

For Petitioner : Mr.A.Thiyagarajan, Standing Counsel
for Mr.S.Ramesh Kumar
For Respondent : Mr.K.Venkatesh,
Government Advocate

O R D E R

Heard Mr.A.Thiyagarajan, leanred Standing Counsel for Mr.S.Ramesh Kumar, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepting notice on behalf of the respondent.

2.Since the issue involved in this writ petition is covered by the earlier decision of this Court in the case of JKM Graphics Solutions vs. Commercial Tax Officer reported in (2017) 99 VST 343 (Madras), the writ petition itself is taken up for disposal.

3.The impugned order of assessment under the provisions of Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) is for the assessment year 2010-2011. The petitioner's assessment is sought to be revised based upon the details culled down from the official website of the respondent Department.

4.An identical issue was considered by this Court and certain directions have been issued in the said decision and the operative portion of the judgment reads 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.In the light of the above decision, the Assessing Officer has to necessarily re-do the assessment in accordance with the guidelines issued in the above mentioned order.

6.The learned Government Advocate appearing for the respondent would submit that the Commercial Tax Department is in the process of issuing general circular as to how the mis-match cases have to be dealt with and because of the advent of the GST, the issuance of the circular is delayed.

7.In the light of the fact that the order of assessment has been completed without adhering to the procedures laid down in the aforementioned judgment, the same calls for interference. Accordingly the writ petition is allowed and the impugned assessment order is set aside and the matter is remanded back to the Assessing Officer for re-doing the assessment by strictly adhering to the guidelines stipulated in the aforementioned order after giving an opportunity of personal hearing to the petitioner. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

abr

To

The Commercial Tax Officer,
Mannargudi Assessment Circle,
Mannargudi.

+1 cc to Mr.S.Ramesh kumar Advocate sr 46611
+1 cc to Special Government Pleader tax sr 46804

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