IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.06.2017

C O R A M

THE HON'BLE Mr.JUSTICE K. RAVICHANDRABAABU

W.P.Nos.2911 to 2913 of 2017
and
W.M.P.Nos.2819 and 2821 of 2017

Tvl.Goodwill Automotive
rep. By P.Hari Kalyan, Partner
No.H-4, Parepalli Tower,
Anna Nagar East,
Chennai - 102. ...Petitioner in all the W.Ps.

Vs

The Assistant Commissioner (CT)
Amaindakarai Assessment Circle,
No.F-50, I Avenue,
Anna Nagar East,
Chennai - 102. ... Respondent in all the W.Ps.

Prayer: Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of the respondent herein in TIN No.33121020417/2012-13 dated 26.12.2016; TIN No.33121020417/2014-15 dated 26.12.2016 and TIN No.33121020417/2013-14 dated 26.12.2016 respectively and quash the same.

For petitioner ... Mr.S.N.Kirubanandam
For respondent ... Mr. S.Kanmani Annamalai
Additional Government Pleader.

C O M M O N O R D E R

All these three writ petitions are filed challenging the order of assessment passed individually in respect of the assessment years 2012-13, 2013-14 and 2014-15. All the three orders were passed on 26.12.2016.

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

3. Learned counsel for the petitioner submitted that the issue involved in W.P.Nos.2911 and 2913 of 2017, namely, mismatch is covered by the decision of this Court made in W.P.No.105/2016 etc. dated 01.03.2017. Insofar as W.P.No.2912/2017 referable to the assessment year 2014-15 is concerned, learned counsel submitted that out of the two issues involved therein, one issue, namely, the 2nd issue is mismatch and thus, covered by the above said decision. In respect of the 1st issue of the said assessment year, namely, Stock Reconciliation is concerned, learned counsel submitted that he would agitate the matter before the Appellate Authority. Learned Additional Government Pleader is not disputing the fact that the issue involved in W.P.Nos.2911 and 2913/2017 as well as the 2nd issue in W.P.No.2912/2017, namely, mis-match is covered by the decision of this Court reported in W.P.No.105/2016 etc. dated 01.03.2017. At paragraph Nos.56 to 58 of the above said order, 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 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."

4. Therefore, it is evident that the Assessing Officer has to re-do the assessment in the light of the order passed by this Court as stated supra by following the guidelines/ directions issued therein. Accordingly, the W.P.Nos.2911 and 2913 of 2017 are allowed, the impugned orders are set aside. W.P.No.2912 of 2017 is allowed in part and the impugned order of assessment herein is set aside only insofar as the issue of mis-match in interstate purchase is concerned. Consequently, the

matter is remitted back to the Assessing Officer for re-doing the assessment in respect of mis-match issue for all the three assessment years by following the procedures/guidelines issued in W.P.No.105 of 2016 etc. dated 01.03.2017. It is made clear that insofar as the 1st issue in respect of the assessment year 2014-2015, the assessment order stands and it is open to the petitioner to challenge such issue before the appropriate appellate authority. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi

To

The Assistant Commissioner (CT)
Amaindakarai Assessment Circle,
No.F-50, I Avenue,
Anna Nagar East,
Chennai - 102.

+1cc to Special Government Pleader (Taxes) Sr. 39665

+1cc to Mr.S.N.Kirubakaran, Advocate Sr. 39892

W.P.Nos.2911 to 2913 of 2017

SJ(CO)
VR(14/06/2017)