IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.05.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.39614 of 2016
and
WMP.No.33898 of 2016

Tvl. Vee Ar Sealing Systems
Represented by its Partner, Mr.D.Rajesh
18, T.H.Road, Chennai-600 118. ... Petitioner

Versus

Assistant Commissioner (CT)
Kodungaiyur Assessment Circle,
Chennai-118. ...Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the respondent in order dated 15.09.2016 in TIN:33391083658/2011-12 and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondent : Mr.S.Kanmani Annamalai (Tax)
Additional Government Pleader

O R D E R

Today, the matter is listed before this Court in a special sitting during summer vacation. Both sides agreed for taking up the matter for final disposal, though the counter affidavit is not filed.

2. The petitioner is aggrieved by the order of assessment passed in respect of assessment year 2011-2012 dated 15.09.2016.

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

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4. There are totally four issues involved in this case, which are as follows:-

(1) Mismatch between Annexure-I and Annexure-II of the dealer.
(2) Difference in purchase as per Annexure-II of the other end dealer.
(3) Difference in sales as per Annexure-I of the other end dealer.
(4) Dis-allowance of sales to SEZ units.

5. It is represented by both sides that out of four issues, three issues viz., Issue Nos.1, 2 and 3 are covered by the decision of this Court made in W.P.No.105/2016 etc., dated 01.03.2017. Therefore, the learned counsel for the petitioner submitted that the matter may be remitted back to the Assessing Officer to re-do the assessment insofar as those three issues are concerned, in the light of the above order passed by this Court. Insofar as the other issue No.4 is concerned, the learned counsel for the petitioner submitted that they are not pressing the writ petition, as the petitioner would agitate the same before the appropriate authority. As submitted by both sides, the Issue Nos. 1, 2 and 3 are covered by the decision of this Court made in W.P.No.105/2016 etc., dated 01.03.2017, wherein at paragraph 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

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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

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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."

6. Accordingly, this writ petition is allowed in part and the impugned order of assessment is set aside, only insofar as the Issue Nos. 1, 2 and 3 viz., mismatch between Annexure-I and Annexure-II of the dealer, difference in purchase as per Annexure-II of the other end dealer and difference in sales as per Annexure-I of the other end dealer. Consequently the matter is remitted back to the Assessing Officer for re-doing the assessment insofar as those three issues in the light of the order passed by this Court in W.P.No.105/2016 etc., dated 01.03.2017. Such exercise shall be done by the Assessing Officer, within a period of eight weeks from the date of receipt of a copy of the order. Insofar as the other issue viz., dis-allowance of sales to SEZ units is concerned, it is open to the petitioner to agitate the matter before the appropriate authority. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mk
To

The Assistant Commissioner (CT)
Kodungaiyur Assessment Circle,
Chennai-118.

+1cc to M/S.Adithya Reddy, Advocate Sr.37077
+1cc to the Special Government Pleader Sr.37152

Writ Petition No.39614 of 2016

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