IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.755 to 757 of 2016
and
W.M.P.Nos. 564, 566 and 568 of 2016

M/s. Saravana Super Market
Rep. by its Proprietor – P.Selvam ...Petitioner in all W.Ps'

Vs.

The Commercial Tax Officer,
vandawasi,
Tiruvannamalai District.
....Respondent in all W.Ps'

Writ Petitions filed under Article 226 of The Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records on the file of the respondent in its impugned proceedings made in TIN Nos.33604602266/2011-2012, 33604602266/2013-2014 and 33604602266/2014-2015 dated 10.12.2015 and quash the same.

For Petitioner ... Mr.S.Rajasekar

For Respondents.. Mr.S.Kanmani Annamalai,
(In all W.Ps') Additional Government Pleader.

COMMON ORDER

The petitioner is aggrieved against the order of assessment made in respect of assessment years 2011-12, 2013-14 and 2014-15.

2. Heard learned counsel for the petitioner and the learned counsel appearing for the respondent.

3. The order of assessment made in this writ petition are challenged mainly on the ground that the Assessing Authority is not justified in relying on web report to say that there is mismatch, without giving the details of such report to the petitioner and conducting an enquiry at all levels.

4. The learned counsel appearing for the petitioner submitted that in so far as the assessment made based on web report is concerned, this court in a batch of cases in W.P.No.105 of 2016 etc., dated 01.03.2017, has observed that the assessment order has to be passed only by evolving a centralised mechanism to deal with the cases of mismatch. Therefore, the learned counsel submitted that the case on hand squarely falls within the parameters of the order passed in the above batch of cases.

5. The learned counsel appearing for the respondent is not disputing the above said fact and therefore, submitted that the respondent will follow the guidelines/directions issued in the above batch of cases and redo the assessment accordingly.

6. A perusal of the order passed in the above said batch, more particularly at paragraph Nos. 56 to 58, would show that the Assessing Officer, while dealing with the assessment based on web report, has to follow certain procedures and guidelines, as set out in the above said order. Paragraph Nos.56 to 58 of the said order 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."

7. Considering above said facts and circumstances and since the issue involved in this case is squarely covered by the above decision of this court, the writ petitions are allowed and impugned assessment orders are set aside. Consequently, the matters are remitted back to the Assessment Authority for passing fresh orders, after following the procedures/directions issued by this court in the above said batch cases. The

petitioner should also be given an opportunity of personal hearing before finalizing the assessment. Such exercise shall be done 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/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

vsm

To

The Commercial Tax Officer,
Wandawasi,
Tiruvannamalai District.

+1cc to The Special Government Pleader (Taxes) sr.17748

W.P.No.755 to 757 of 2016

pa(co)
ss(7/4/2017)