BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:06.06.2017

CORAM:
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.(MD) No.109 of 2017
and
C.M.P.(MD).No.1100 of 2017

J.Alagu Meena
Proprietor of Jai Vishal Traders,
No.57-C1, Chatiram North Street,
Kovilpatti,
Tuticorin District. ...Appellant/Petitioner

Vs.

The Commercial Tax Officer,
Kovilpatti- II
Tuticorin District. ...Respondent/Respondent

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent Act against the order passed in W.P.No.18247 of 2016, dated 23.09.2016.

Prayer in WP(MD). 18247/ 2016 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records relating to the order in Tin NO. 33815942933/2014-15 dated 28.12.2015 passed by the respondent and quash the same.

For Appellant : Mr.M.MD.Ibrahim Ali
For Respondent : Mr.R.Karthikeyan
Additional Government Pleader

JUDGMENT
[Judgment of the Court was delivered by **T.S.SIVAGNANAM,J**]

Heard Mr.M.MD.Ibrahim Ali, learned counsel appearing for the appellant and Mr.R.Karthikeyan, learned Additional Government Pleader appearing for the respondent.

2.This appeal is directed against the order passed in W.P.(MD)No.18247 of 2016, dated 23.09.2016. The said writ petition was filed challenging the order of assessment under the provisions of Tamil Nadu Value Added Tax Act, 2006 for the assessment year

2014-2015. The assessment for the relevant year was completed and the returns being accepted, subsequently a notice was issued to the petitioner, dated 20.10.2015 proposing to re-assess the total taxable turn-over on the ground that on cross-verification in the Annexure-II of other dealer from the intranet website of this department website, there was a mis-match. The appellant/dealer though received notice, did not file his objection, therefore, the Assessing Officer set him exparte and passed an order of assessment. This order of assessment is said to have been received by the appellant on 09.05.2016. The appellant had 60 days time to prefer an appeal, however, it appears that he had fallen sick and remitted 25% of the Tax on 19.08.2016 and filed the writ petition. The learned Single Judge heard the matter and dismissed the same on the ground that it is barred by limitation and is not maintainable as the appeal period itself is over. While agreeing with the view expressed by the learned Single Judge, we are concerned with the procedure adopted by the Assessing Officer in proposing to assess the total and taxable turn-over, as proposed in the notice, dated 20.10.2015. In the case of ***JKM Graphics Solutions Private Limited vas. Commercial Tax Officer, Vepery Assessment Circle, Chennai reported in (2017) 99 VST 343 (Mad),*** the Court considered, similarly proposal to assess the dealers' Tax or to revise already completed assessment based on mis-match found in intranet website. In the said order directions were issued to the authorities to follow the procedure before making such assessment solely based on the discrepancy or mis-match in the intranet website. The operative portion of the order reads as follows:-

> *"...53. The position under the TNVAT Act is no different after the recent amendment by Tamil Nadu Act, 2015, with effect from January 29,2016, by which the words "tax paid or payable" occuring in section 19(1) was substituted with the word "tax paid" and a proviso was inserted under subsection (I) of section 19. As mentioned above, all these cases pertained to orders passed prior to the amendment, I.e., before Jaunary 29,2016. It was argued on behalf of the petitioners that the expression used in section 19(1) of the TNVAT Act is tax paid or payable under the Act and if the purchasing dealer is able to produce proof to show payment of tax, then nothing more is required to be done by him and he is entitled to credit as a matter of right. In the considered view of this court, the amendment to the Act brought about by act 13 of 2015 with effect from January 29, 2016, does not cause much impact on the controversy, which is being dealt with in these writ petitions, as the benefit of credit itself is a creation of the statute.*
>
> *54. As explained by the honourable Supreme Court, it is a concession extended to the dealer and a person, who*

claims such a concession has to establish that he is entitled to such concession. Such provision providing for such concession should be construed strictly, thus but for this provision under the statute, the dealer does not acquire a legal right to claim credit of the purchase tax paid and of input credit from the sales tax payable on the sale of goods manufactured by him. The entitlement to such credit flows from the statute. Therefore, the conditions to be fulfilled by the dealer to be entitled to such a credit, which is statutory in character, is mandatory. Therefore, it will be too broad principle to state that all that the dealer is required to produce along with his return, proof of payment of tax and documents required to be filed along with return and would be automatically entitled to credit. This is so because the object of introducing such mechanism permitting credit is on one hand to ensure against cascading tax burden and on the other hand of promoting regulatory compliance. Thus, if a concession so granted by the statue is shown to have been availed, furnishing incorrect details or adopting certain other dubious methods, the same requires to be dealt with under the statue and such unintended benefit has to be reversed.

55.Admittedly, in the instant case, there is no challenge to the statutory provisions and the complaint of all the dealer is largely on the procedure adopted by the respective assessing officers. The Principal Secretary and Commissioner of Commercial Taxes conscious of the problems faced by the dealers as complaints were received which had lead to issuance of a circular as early as on April, 1, 2015. The directions contained in the said circular are very pointed direction, but it is sad to note that the circular remains only on paper and seldom assessing officers follow the circular resulting in several assessments being set aside by the court and remanded for denova consideration. Thus, this court is fully convinced that the procedure adopted by the respondent, assessing officers in all these cases are half baked attempts, which have not yielded results and these cases are before this court or before the appellate authorities and all that the assessing officers can record is that they have issued show-cause notices or passed orders reversing the input-tax credit with no appreciable impact on the revenue collection.

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 dafaulting 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 State Government, and till then to devise a procedure which is fair and reasonable and afford an opportunity to the dealer to put forth 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.*

3.We are informed that the above order has been followed in the Principal Bench and till date no appeal has been preferred.

4.In the instant case we find that the petitioner did not have full details and could not have submitted an effective objection to the notice, dated 20.10.2015. Thus, under the peculiar facts and circumstances of the case and taking note of the fact that the petitioner had already paid 25% of the disputed tax, we deem it appropriate to grant one more opportunity to the petitioner to put-forth their contentions. However, before that, the respondent should issued proper notice to the appellant containing full details.

5.Accordingly, the writ appeal is disposed of with the following directions. The respondent is directed to issue fresh show-cause notice to the petitioner clearly setting out as to how the alleged mis-match has occurred with invoice numbers, TIN numbers, Commodity Code etc., and provide 15 days time to the petitioner to submit their objection and on receipt of such objection , the respondent is directed to afford an opportunity of personal hearing to the petitioner and decide the matter afresh and pass a speaking order on merits and in accordance with law.

Sd/-
Assistant Registrar(A.S)

/True copy/

Sub Assistant Registrar

To
The Commercial Tax Officer,
Kovilpatti- II
Tuticorin District.

+1cc to Mr.Mohammed Ibrahim Ali,Advocate,SR.NO.58706.
+1cc to M/S THE SPECIAL GOVERNMENT PLEADER, SR.NO.58807

W.A.(MD) No.109 of 2017
27.06.2017

DAS/AM
KK/SV MMG/SAR2/27.06.2017/5P-4C/