IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 09.03.2018
CORAM
THE HONOURABLE Mr. JUSTICE M.DURAISWAMY
W.P.Nos.5364 to 5366 of 2018 &
W.M.P.Nos.6586 to 6590 of 2018

M/s.Raj Vijay TVS
Represented by its Proprietor
P.C.Arun Kumar
No.10, Imperial Road
Cuddalore - 607 003 .. Petitioner in all W.Ps

v.

1.The Assistant Commissioner (CT) (FAC)
Cuddalore Town Assessment Circle
Cuddalore

2.The Branch Manager
City Union Bank
Cuddalore

3.The Branch Manager
State Bank of India
Manjakuppam

4.The Branch Manager
HDFC Bank
Cuddalore

5.The Branch Manager
Indian Overseas Bank
Cuddalore. .. Respondent in all W.Ps

W.P.No.5364/2018 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, call for the impugned proceedings of the 1st respondent in TIN No.33054382524/2012-13, dated 24.02.2017 and quash the same as passed contrary to the provisions of the Tamil Nadu Value Added Tax Act, 2006 and also against the principles of natural justice.

W.P.No.5365/2018 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, call for the impugned proceedings of the 1st respondent in TIN No.33054382524/2014-15, and to quash the impugned order dated 04.10.2017 same as passed contrary to the provisions of the Tamil Nadu Value Added Tax Act and against the principles of natural justice.

W.P.No.5366/2018 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, call for the impugned proceedings of the 1st respondent in TIN No.33054382524/2015-16, and to quash the impugned order dated 04.10.2017 same as passed contrary to the provisions of the Tamil Nadu Value Added Tax Act and against the principles of natural justice.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.G.Dhanamadhri
Govt. Advocate (T) - for R1

COMMON ORDER

Mr.G.Dhanamadhri, learned Government Advocate (Tax), takes notice for the 1st respondent. By consent, the main writ petitions are taken up for disposal at the admission stage itself.

2. The petitioner has filed the above writ petitions to issue a Writ of Certiorarified Mandamus to call for the impugned proceedings of the 1st respondent dated 24.02.2017 and 04.10.2017 in respect of the assessment years 2012-13, 2014-15 and 2015-16 respectively and to quash the same, as passed contrary to the provisions of the Tamil Nadu Value Added Tax Act, 2006 and against the principles of natural justice.

3. The learned counsel appearing for the petitioner submitted that in respect of the assessment year 2012-13, the petitioner has paid the entire tax liability of 09,06,554/- [Rupees nine lakhs six thousand five hundred and fifty four only] . Further, the learned counsel submitted that the issue involved in these writ petitions is mismatch and such issue is already covered by the decision of this Court in W.P.No.105/2016 etc., batch, dated 01.03.2017. This Court, in the said decision, has directed the Assessing Officer to evaluate a centralised mechanism exclusively to deal with the cases of mismatch and to do some exercise, before issuing a notice. In the said order, in 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 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."

4. Mr.G.Dhanamadhri, learned Government Advocate (Tax) appearing for the 1st respondent submitted that in view of the order passed in the above referred writ petitions, the Assessing Officer has to re-do the assessment, by following procedures/guidelines issued in the above said order.

5. Having regard to the submissions made by the learned counsel on either side and considering the fact that the Assessing Officer has to re-do the assessment, in view of the above said decision of this Court, this writ petitions are allowed and the impugned orders are set side. Consequently, the matters are remitted back to the Assessing Officer to re-do the assessment commencing from the stage of issuing notice of proposal, after following guidelines/procedures issued by this

Court in the above referred order. The Assessing Officer shall also give personal hearing to the petitioner before finalizing the order of assessment. Whole exercise shall be completed by the Assessing Officer within a period of eight weeks from the date of receipt of a copy of this order. Since the impugned orders are set aside, the order of attachment passed by the 1st respondent stands raised. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Rj
To

1.The Assistant Commissioner (CT) (FAC)
Cuddalore Town Assessment Circle
Cuddalore

+1 cc to Mr.P.Rajkumar Advocate sr 17922

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aa15/03/2018