IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2018

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

W.P.Nos.3601 & 3602 of 2018 &
W.M.P.Nos.4429 & 4430 of 2018

M/s.Amman Auto Wings
Represented by Suresh Kumar
Partner
1/17, Salem Main Road
Harur - 636 903 .. Petitioner in both W.Ps

v.

The State Tax Officer
Harur
Dhrmapuri District .. Respondent in both W.Ps

W.P.No.3601/2018 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the file of the respondent in TIN 33743343711/2014-15, dated 28.12.2017 and quash the same as being invalid and illegal and violative of principles of natural justice.

W.P.No.3602/2018 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the file of the respondent in TIN 33743343711/2015-16, dated 29.12.2017 and quash the same as being invalid and illegal and violative of principles of natural justice.

For Petitioner : Mr.V.Srikanth

For Respondent : Ms.Dhana Madhri
Government Advocate (T)

COMMON ORDER

Ms.Dhana Madhri, learned Government Advocate (Tax) takes notice for the 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 Writs of Certiorari to call for the records on the file of the respondent dated 28.12.2017 & 29.12.2017 and to quash the same as being invalid, illegal and violative of principles of natural justice.

3. It is the case of the petitioner that the returns filed by the petitioner for the years 2014-15 and 2015-16 had been accepted by the respondent and an order was passed under section 22 of the Tamil Nadu Value Added Tax Act. The respondent had issued a show cause notice for both the years relying on the departmental websites. The petitioner had filed objections for both the years. Though the reply was considered by the respondent for the year 2014-15, the reply for the year 2015-16 was not considered by the respondent. Hence, the petitioner has filed the above writ petitions.

4. The learned counsel appearing for the petitioner submitted that the respondent has not conducted an enquiry as directed by this Court in the judgment reported in 99 VST 343 [JKM Graphics Solutions Private Limited v. Commercial Tax Officer, Vepery Assessment Circle, Chennai]. The learned counsel further submitted that the respondent has not considered the reply filed by the petitioner for the year 2015-16, hence, there is violation of principles of natural justice. The learned counsel also 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."

5. Ms.Dhana Madhri,, learned Additional Government Pleader (Tax) appearing for the 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.

6. 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. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Rj

To

The State Tax Officer
Harur
Dhrmapuri District

+ 1 cc to Mr.C. Venkatarman, Advocate Sr.12664
+ 1 cc to Mr.Government Pleader SR.12905

W.P.Nos.3601 & 3602 of 2018 &
W.M.P.Nos.4429 & 4430 of 2018

EU(23/02/2018)