

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2018

CORAM

THE HONOURABLE MR. JUSTICE M.DURAI SWAMY

W.P.No.6636 of 2018 and

W.M.P.No.8234 of 2018

M/s.Eshwari Petro Products Private Ltd.,
rep by its Managing Director,
No.2A, Hanut Flats,
No.131/132, Vellalar Street,
Chennai - 600 088.

.. Petitioner

Vs.

1.The Commercial Tax Officer,
Nanganallur Assessment Circle,
Chennai - 600 091.

2.M/s.Bitu Tech Constructions,
132/126, V.R.Pillai Street,
Triplicane,
Chennai - 600 005.

3.M/s.Karan Engineers,
10/1, G.K.Square,
Palani Boier Street, Kurichi,
Sundarapuram Post,
Coimbatore - 641 024.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus to call for the records relating to the impugned order dated 10.11.2017 made in TIN/33720987107/2009-10 by the 1st respondent, quash the same and consequently, direct the 1st respondent to proceed against the respondents 2 & 3 to recover their sales tax liability.

For Petitioner : Mr.N.Manokaran

For RespondentsR1: Mr.M.Hariharan
Additional Government Pleader (Tax)

O R D E R

By consent, the main Writ Petition is taken up for disposal at the admission stage itself.

2.The petitioner has filed the above Writ Petition to issue a Writ of Certiorarified mandamus to call for the records relating to the impugned order dated 10.11.2017 for the assessment year 2009-10 passed by the 1st respondent and to quash the same and consequently, direct the 1st respondent to

proceed against the respondents 2 & 3 to recover their sales tax liability.

3.The learned counsel appearing for the petitioner submitted that the issue involved in the Writ Petition is mismatch and such issue is already covered by the decision of this Court in W.P.No.105 of 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 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 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 Maharashtra, 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.M.Hariharan, learned Additional Government Pleader (Tax) taking notice for the respondents 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 the 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, the Writ Petition is allowed and the impugned order dated 10.11.2017 is set aside. Consequently, the matter is remitted back to the Assessing Officer to re-do the assessment commencing from the stage of issuing notice of proposal, after following the 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. The whole exercise shall be completed by the Assessing Officer as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Commercial Tax Officer,
Nanganallur Assessment Circle,
Chennai - 600 091.

+1cc to Special Government Pleader Sr.No.22496

+1cc to Mr.N.Manokaran, Advocate SR.No.22018

AD(CO)

sm:4.4.2018

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