IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2018

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THE HONOURABLE MR. JUSTICE M.DURAISWAMY

W.P.Nos.6744 to 6748 of 2018
and
W.M.P.Nos.8372 to 8376 of 2018

M/s.MIL Industries Limited
rep by its General Manager N.Guruswamy
25A SIDCO Industrial Estate, Ambattur,
Chennai - 600 098.
.. Petitioner in all W.Ps.

Vs.

The Commercial Tax Officer,
Pattaravakkam Assessment Circle,
No.127, Yadaval Street Padi,
Chennai - 600 050. .. Respondent in all W.Ps.

Petitions filed under Article 226 of the Constitution of India to issue Writs of Certiorarified mandamus to call for the records on the file of the respondent in relation to the demands made by him in the impugned order No.TIN/33071360963/2011-12, 2012-13, 2013-14, 2014-15 & 2015-16 dated 22.01.2018, quash the same with a consequential direction to the respondent directing him to consider the submissions made by the petitioner before him by way of replies to the show cause notices and re-do the assessment in a fair and proper manner by affording an opportunity of personal hearing to the petitioner.

For Petitioner (in all W.Ps.) : Mr.K.Magesh

For Respondent (in all W.Ps.) : Mrs.G.Dhanamadhri
Government Advocate (Tax)

C O M M O N O R D E R

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 Writs of Certiorarified mandamus to call for the records on the file of the respondent in relation to the demands made by him in the impugned order dated 22.01.2018 for the assessment years 2011-12, 2012-13, 2013-14, 2014-15 & 2015-16 and to quash the same with a consequential direction to the respondent directing him to consider the submissions made by the petitioner before him by way of replies to the show cause notices and re-do the assessment in a fair and proper manner by affording an opportunity of personal hearing to the petitioner.

3.The learned counsel appearing for the petitioner submitted that the issue involved in these Writ Petitions are 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:

> "...
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> 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.Mrs.G.Dhanamadhri, learned Government Advocate (Tax) taking notice for the respondent submitted that the respondent is having practical difficulties for the reason that after the implementation of the GST, they are not having the mechanism to verify the details as directed in the order dated 01.03.2017.

5.Since this Court had already decided the issue and also that no appeal has been preferred as against the said order, this Court is bound by the order dated 01.03.2017.

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, the Writ Petitions are allowed and the impugned orders are 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 petitions are closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer,
Pattaravakkam Assessment Circle,
No.127, Yadaval Street Padi,
Chennai - 600 050.

+1cc to Mr.Muthuvenkataraman, Advocate SR.No.22278
+1cc to Special Government Pleader(Taxes) SR.No.22997

W.P.Nos.6744 to 6748 of 2018 and
W.M.P.Nos.8372 to 8376 of 2018

KJ(CO)
GN(10/04/2018)