IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2018

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.13019 to 13022 of 2017
and
WMP Nos.13894 to 13897 of 2017

Real Talent Engineering Pvt. Limited,
Rep. by its Director, Mr.S.Ravindran,
Sonia Gandhi Industrial Estate,
Soorai Post, Via Banavaram,
Arakkonam Taluk-632 505. ... Petitioner in all WPs.

Vs.

Assistant Commissioner (CT),
Ranipet (Sipcot),
No.19-A, Kellys Road,
Navalpur, Ranipet-632 401. ... Respondent in all Wps.

Prayer in W.P.No.13019 of 2017 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the impugned notice of the respondent dated 28.04.2017 issued in TIN : 33864361272/2010-11, and quash the same in so far as it relates to the web report proposal for Rs.3,35,59,130/- and further direct the respondent to follow the directions of this Court passed in W.P.No.105/2016 dated 01.03.2017 in respect of this issue while issuing the notice.

Prayer in W.P.No.13020 of 2017 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the impugned notice of the respondent dated 28.04.2017 issued in TIN : 33864361272/2011-12, and quash the same in so far as it relates to the web report proposal for Rs.3,25,28,718/- and further direct the respondent to follow the directions of this Court passed in W.P.No.105/2016 dated 01.03.2017 in respect of this issue while issuing the notice.

Prayer in W.P.No.13021 of 2017 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the impugned notice of the respondent dated 28.04.2017 issued in TIN : 33864361272/2013-14, and quash the same in so far as it relates to the web report proposal for Rs.2,08,09,290/- and further direct the respondent to follow the directions of this Court passed in W.P.No.105/2016 dated 01.03.2017 in respect of this issue while issuing the notice.

Prayer in W.P.No.13022 of 2017 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the impugned notice of the respondent dated 28.04.2017 issued in TIN : 33864361272/2014-15, and quash the same in so far as it relates to the web report proposal for Rs.18,72,21,253/- and further direct the respondent to follow the directions of this Court passed in W.P.No.105/2016 dated 01.03.2017 in respect of this issue while issuing the notice.

For Petitioner in all WPs. : Mr.N.Murali

For Respondent in all WPs. : Mrs.G.Dhanamadhri, Government Advocate

C O M M O N O R D E R

Heard Mr.N.Murali, learned counsel for the petitioner and Mrs.G.Dhanamadhri, learned Government Advocate for the respondent.

2.As the limited issue involved in these writ petitions and the challenge in these writ petitions are only the show cause notices, the same are taken up for disposal at this juncture. The sheet anchor of the contention as advanced by the learned counsel for the petitioner is that the respondent has not adhered to the directions issued by this Court in the case of M/s.JKM Graphics Solutions Private Limited vs. The commercial Tax Officer in W.P.No.105 of 2016 and etc. batch, dated 01.03.2017. The orders, which were impugned in those batch of cases were show cause notices or assessment orders, where the assessing officer sought to reverse the input tax credit availed by the petitioners therein on the ground that there was a mismatch of the details disclosed in the returns filed by the dealer, when compared with the details available with the Department, which are the returns filed by the other end dealer.

3.After elaborately considering the submissions made on either side, the Court noted that there was no procedure involved under the provisions of the Tamil Nadu Value Added Tax Act, 2006 to guide the assessing officer as to how the assessment should be completed, when mismatch occurs on account of informations culled out from the Departmental website. Therefore, the Court observed that a set of procedure has to be evolved to consider these type of cases, viz., mismatch cases. Since there were no guidelines in force at the relevant time, the Court issued certain guidelines as to how the assessing officer has to go about while considering the revision of assessment, when mismatch occurs. The operative portion of the decision is as follows:-

> "56..........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 the 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."

4.The main grievance of the petitioner is that the above referred decision has not been followed by the respondent while issuing the impugned notices. On a perusal of the impugned notices, I find that the notices are bereft of particulars and it has not been disclosed as to what are discrepancies noticed by the respondent while securing the details through departmental website. Unless the dealer is furnished with adequate information, he would not be in a position to give an effective reply. Notices, which are vague, have to be held to be not satisfied the test of reasonableness and also held to be in violation of principles of natural justice. Therefore, the petitioner should have reasonable information being furnished to him to put forth an effective information and I find that the impugned notices do not contain sufficient material for the petitioner to place a defence. Therefore, this Court is inclined to direct the assessing officer to issue fresh notice with full details. However, for that reason, it may not be necessary for this Court to set aside the impugned notices. However, fresh notices can be issued in supersession of the impugned notices.

5.For the above reasons, these writ petitions are disposed of by directing the respondent to issue fresh notice to the petitioner mentioning the details such as, the name of the dealer, the TIN number, invoice amount, commodity code, total amount paid and amount of tax paid etc. As and when the notices are received by the petitioner, they shall file their objections and if any more details are required, then it is for them to approach the assessing officer with a request to furnish additional details. If additional detail as sought for by the petitioner has to be legally furnished, then alone the respondent is required to furnish the same. After which, a full and an effective opportunity of personal hearing should be granted and the assessment should be completed by passing a reasoned order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

abr

To

The Assistant Commissioner (CT),
Ranipet (Sipcot),
No.19-A, Kellys Road,
Navalpur, Ranipet-632 401.

+4cc's to Mr.N.Murali, Advocate SR.No.8599
+1cc to Government Pleader SR.No.8966

W.P.Nos.13019 to 13022 of 2017

SSI(CO)
GN(15/03/2018)