IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.1.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NOS.33102 & 33103 OF 2017

& WMP.NOS.36518 & 36519 OF 2017

Arvind Suriya Ceramics, rep.
by its Proprietor P.Kumar ...Petitioner

Vs

The Commercial Tax Officer (Main),
Tindivanam, Villupuram District. ...Respondent

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records of the respondent in orders dated 08.11.2017 respectively made in TIN : 33344723368/2011-12 and TIN : 33344723368/2012-13 and quash the same in so far as it seeks to estimate the petitioner's turnover based on probable omission at equal time.

For Petitioner : Mr.Manoharan Sundaram
For Respondent : Ms.G.Dhana Madhri, GA

COMMON ORDER

Heard both.

2. The petitioner is aggrieved by the impugned orders only with regard to equal time addition made by the respondent.

3. The petitioner is an exclusive dealer of M/s.Arvind Ceramics, Porur. On verification of the dealer's details gathered from the dealer's profile through intranet website, the respondent alleged that there has been a purchase omission and accordingly, the revision notices dated 09.12.2013 were issued. In the said notices, apart from proposing to tax the purchase omission, there was a proposal to make equal time addition for the probable omission for the years 2011-12 and 2012-13.

4. Though the petitioner received the said revision notices and sought time to submit their objections, they did not do so, resulting in the assessment orders dated 03.1.2014 for both the assessment years. Pursuant to that, the petitioner sent a representation dated 27.1.2014 stating that in pursuance of the revision notices dated 09.12.2013, they had filed revised returns under Rule 7(9) of the Tamil Nadu Value Added Tax Rules 2007 for both the assessment years along with the letter dated 02.1.2014 and that in spite of the same, the order was passed on 13.1.2014 pre-dating it as 03.1.2014. The petitioner further pointed out that the

respondent had encashed the cheques for both the assessment years, which were sent along with the revised returns. Therefore, the petitioner requested the respondent to exercise his power under Section 84 of the said Act and drop all further proceedings after granting an opportunity of personal hearing.

5. Since the representation dated 27.1.2014 was not considered, the petitioner filed W.P.Nos.12599 and 12600 of 2014 challenging the orders dated 03.1.2014 for the years 2011-12 and 2012-13 and the consequential order dated 11.2.2014 for the assessment year 2012-13 and to revise the assessments. The said writ petitions were allowed by a common order dated 25.7.2016 by remanding the matters for a fresh consideration, pursuant to which, the respondent afforded an opportunity of personal hearing. Thereafter, the impugned assessment orders have been passed rejecting the revised returns.

6. If the respondent accepted those returns after the revision notices dated 09.12.2013 and encashed the cheques enclosed along with the revised returns, the respondent should consider the same especially when the allegation is based upon the information culled out from the intranet website. Further, in the decision in the case of JKM Graphics Solutions Private Limited Vs. CTO, Vepery Assessment Circle [reported in (2017) 99 VST 343], this Court stipulated certain guidelines as to how the assessment should be made when there is an allegation of mismatch culled out from the intranet website.

7. Apart from that, this Court, in the case of Nokia India Pvt. Ltd. Vs. Deputy Commissioner [reported in 2014 (12) TMI 954], held that merely because the assessee's explanation as regards the subsequent accounting of the unaccounted purchase had been rejected by the officer, that, by itself would not justify the equal time addition towards probable suppression. Therefore, this Court is inclined to remand the matters to the respondent for a fresh consideration with a specific direction to the respondent to consider the petitioner's revised returns filed along with their letter dated 02.1.2014.

8. Accordingly, the writ petitions are allowed, the impugned orders are set aside with regard to estimation of the petitioner's turnover based on probable omission at equal time and the matters are remanded to the respondent for a fresh consideration with a specific direction to consider the revised returns filed by the petitioner after affording an opportunity of personal hearing and redo the assessment in accordance with law. No costs. Consequently, the connected WMPs are closed.

Sd/-
ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

RS

To

The Commercial Tax Officer (Main),
Tindivanam, Villupuram District.

+1 cc to Mr.Manoharan Sundaram, Advocate SR.NO. 2018

+1 cc to Special Government Pleader, High Court, Chennai
SR.NO. 1389

WP.Nos.33102 & 33103 of 2017&
WMP.Nos.36518 & 36519 of 2017

KS(CO)
JK 25/01/18