IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.07.2018

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.17397 of 2018
and
W.M.P.Nos.20681 and 20682 of 2018

M/s.P/Perumal Rasi Hardwares,
rep.by its Managing Partner
P.Perumal,
No.58, G.S.T.Road,
Maduranthakam-603 306,
Kancheepuram District ... Petitioner

vs.

The Assistant Commissioner(CT)(FAC),
Madurantakam Assessment Circle,
Maduranthakam-603 306,
Kancheepuram District ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records on the file of the respondent in his impugned proceedings made in TIN/33091681440/2011-12, date 09.04.2018 and quash the same.

For Petitioner : Ms.R.Hemalatha

For Respondents :Ms.G.Dhana Madhri,G.A.

ORDER

Heard Ms.Hemalatha, the learned counsel for the petitioner and Mr.G.Dhana Madhri, learned Government Advocate, who accepts notice on behalf of the respondent and with the consent of either parties, the writ petition itself is taken up for final disposal.

2.The learned Government Advocate submits that as against the impugned order, an appeal lies to the Appellate Deputy Commissioner(CT) Chennai South and therefore, the writ petition should not be entertained.

3.Under normal circumstances, the Court would have considered the said submission made on behalf of the respondent. But taking note of the manner, in which, the assessment has been completed, this Court is not inclined to accept the said submission of the learned Government Advocate. The Commercial Taxes Department, for and above five years, has been re-opening assessments by having data from their official website and issuing revision notices to the dealers alleging that the turnover disclosed by the dealers in their monthly returns do not match with the turnovers which have been disclosed by selling/purchasing dealers in the returns filed by them, which are uploaded in the official website of the Department. Since there were several cases, which were filed before this Court and in all such cases, interim orders of stay were granted and as a result of which, the entire assessment came to a stand still. Ultimately, all the cases were clubbed together and heard as a batch. The Court, in the case of JKM Graphics Solutions Private Limited Vs. CTO, Vepery Assessment Circle [reported in (2017) 99 VST 343], found that the Scheme of the Tamil Nadu Value Added Tax Act, 2006 does not provide for a fair procedure as to how such 'mismatch' issues should be dealt with, nor there were any guidelines issued by the Commissioner of Commercial Taxes. Therefore, the Court found that in the absence of a statutory provision or any guidelines to the Assessing Officers, each of the Assessing Officers were adopting a different procedure, which was neither fair nor reasonable. Therefore, the Court issued certain guidelines which could be adopted by the Assessing Officers while revising the assessment on the ground of mismatch. Unfortunately, the respondent/Assessing Officer is oblivious of the legal position that has been laid down in JKM Graphics Solutions Private Limited. It not known as to whether the respondent has gone through the orders passed by the Court.

4.Admittedly, the Government has not filed any Appeal against the said order, though there is a Review Petition filed, in which there was enormous delay and the Court has condoned the delay. However, the order passed in JKM Graphics Solutions Private Limited continues to hold the field as on date. Thus, the impugned order, passed by the respondent on a total ignorance of the legal position, deserves to be set aside.

In the result, the writ petition is allowed and the impugned order is quashed. Liberty is granted to the respondent to initiate fresh action in accordance with law. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

msk

To

The Assistant Commissioner(CT)(FAC),
Madurantakam Assessment Circle,
Maduranthakam-603 306,
Kancheepuram District.

+1cc to the Special Government Pleader Sr.45852
+1cc to Ms.R.Hemalatha, Advocate Sr.45506

W.P.No.17397 of 2018

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srg 30/07/2018