IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.25509 of 2018
and
WMP No.29675 of 2018

Tvl.Shawntharya Agency
Represented by its Proprietor
No.2/22m, Keeraikara Street,
Parangipettai, Chidambaram Taluk - 608 502. ..Petitioner

Vs.

The Commercial Tax Officer
Chidambaram-1 Circle. ..Respondent

Writ petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the respondent in order dated 29.06.2018 in TIN 33134441456/2011-2012 and quash the same.

For Petitioner: Mr.Adithya Reddy
For Respondent : Mr.M.Hariharan
Additional Government Pleader

O R D E R

Mr.M.Hariharan, learned Additional Government Pleader takes notice for the respondent. By consent of the parties, this writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order of assessment dated 29.06.2018 passed in respect of the assessment year 2011-2012.

3. The main issue before the Assessing Officer was mis-match, based on the sales details gathered from the Departmental Website. According to the Assessing Officer, the disputed purchase referred to in the assessment order were not accounted for and not reported in the returns. However, it is contended by the petitioner before this Court that the said mis-match issue was already considered by this Court, wherein, certain guidelines and directions were issued as to how the mis-match issue has to be dealt with by the Assessing Officer, by adopting

centralized mechanism, in a batch of cases made in WP.No.105 of 2016 etc., dated 01.03.2017, reported in JKM Graphics Solutions Vs. CTO, ([2017] 1999 VST 343). Therefore, it is contended that the matter has to go back to the Assessing Officer, for re-doing the assessment, by following the procedures and guidelines stipulated in the above said decision.

4. The learned Additional Government Pleader appearing for the respondent is not disputing the fact that the main issue involved in this case is mis-match, and if it is considered, the connected issue will have a bearing on the decision in the first/main issue.

5. Heard both sides.

6. It is seen that the main issue involved in this case is relating to mis-match and covered by the decision of this Court made in W.P.No.105/2016 etc., dated 01.03.2017, wherein this Court at Paragraph Nos. 56 to 58, it has been observed as follows :-

> "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."

7. Thus, this Court is of the view that the Assessing Officer has to re-do the issue, by following certain guidelines/procedures issued in the above said decision of this Court made in W.P.No.105/2016 etc., dated 01.03.2017.

8. Accordingly, this writ petition is allowed and the impugned order of assessment is set aside. Consequently, the matter is remitted back to the Assessing Officer for re-doing the assessment, after giving due opportunity of personal hearing to the petitioner and by following the order made in WP.No.105 of 2016 etc., dated 01.03.2017. Such exercise shall be done by the respondent within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mk
To

The Commercial Tax Officer
Chidambaram-1 Circle.

+1cc to Mr.Adithya Reddy, Advocate SR.NO.67669
+1cc to Special Government Pleader SR.NO.67928

PVS(CO)
sm:17.10.2018