IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.25888, 25892, 25899, 25906, 25913 & 25916 of 2018
and
WMP.Nos.30085, 30091, 30101, 30108, 30114 & 30119 of 2018

M/s.Shanmuga Motors
Represented by S.Natarajan
Proprietor ..Petitioner
(in all WP's)

Vs

The Commercial Tax Offficer
Jayankondam. ..Respondent
(in all WP's)

Writ Petition No.25888 of 2018 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the files of the respondent in TIN:33143622237/2011-2012 dated 28.03.2018 and quash the same.

Writ Petition No.25892 of 2018 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the files of the respondent in TIN:33143622237/2015-2016 dated 28.03.2018 and quash the same.



Writ Petition No.25899 of 2018 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the files of the respondent in TIN:33143622237/2012-2013 dated 04.04.2018 and quash the same.

Writ Petition No.25906 of 2018 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the files of the respondent in TIN:33143622237/2013-2014 dated 28.03.2018 and quash the same.

Writ Petition No.25913 of 2018 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the files of the respondent in TIN:33143622237/2014-2015 dated 28.03.2018 and quash the same.

Writ Petition No.25916 of 2018 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the files of the respondent in TIN:33143622237/2016-2017 dated 16.03.2018 and quash the same.

For Petitioner : Mr.C.Venkatraman
(in all WP's)

For Respondent : Mrs.G.Dhana Madhri
Government Advocate (Tax)
(in all WP's)

O R D E R

Mrs.G.Dhana Madhri, learned Government Advocate (Tax) takes notice for the respondent. By consent of parties, these main writ petitions are taken up for final disposal at the admission stage itself.

2. In all these writ petitions, the petitioner is one and the same, is aggrieved against the orders of assessment passed in respect of the assessment years 2011-2012 to 2016-2017.

3. The petitioner is a dealer and an Assessee before the respondent. In respect of the subject matter assessment years, the notices of proposal were issued to the petitioner and consequently, the impugned assessment orders were passed by the respondent. The grievance of the petitioner before this Court is that the Assessing Officer has not followed the directions and guidelines issued by this Court, while dealing with mis-match issue 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).

4. Thus, it is contended that when one of such issue deals with mis-match in all the assessment years except the assessment year 2016-2017, the Assessing Officer ought to have followed the directions issued in the above said case and completed the assessment only thereafter. The other issue, except the assessment year 2016-2017, in respect of remaining assessment years, is short payment of tax. Likewise, the only issue in respect of the assessment year 2016-2017 is stock discrepancy.

5. On the other hand, the learned Government Advocate (Tax) submitted that the petitioner has not filed any reply to the notices of proposal, except for the assessment year 2012-2013 and also not utilized an opportunity of personal hearing, when it was specifically indicated to them. Therefore, she contended that the petitioner cannot take shelter under the order passed by this Court 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).

6. Heard both sides.

7. There is no dispute to the fact that except for assessment year 2016-2017, in all other assessment years, one of the issue pertains to mis-match. The said issue was already considered by this Court and a common order was passed, 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), wherein, 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."

8. Therefore, it is evident that any order passed without complying with the above directions or guidelines, cannot be sustained, if the issue involved pertains to mis-match. Therefore, this Court is of the view that the matter has to go back to the Assessing Officer to re-do the assessment, once again on merits and in accordance with law, by following the procedures and guidelines issued in mis-match cases, as stated supra. But, at the same time, such remand to the Assessing Officer, by showing indulgence to the petitioner, can be done only by putting them on some terms, in view of the fact that the petitioner failed to give their reply, except for assessment year 2012-2013 and also not utilized the opportunity of personal hearing. Therefore, all these writ petitions are disposed of, in the following terms:

(a) All these 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, by following the procedures and guidelines in made in WP.No.105 of 2016 etc., dated

01.03.2017, reported in JKM Graphics Solutions Vs. CTO, ([2017] 1999 VST 343), subject to the condition that the petitioner pays 15% of the tax liability in each assessment year along with the reply to the notices of proposal within a period of two weeks from the date of receipt of a copy of this order.

(b) On receipt of such payment of tax and reply, the Assessing Officer shall re-do the assessment, after giving due opportunity of personal hearing to the petitioner once again, within a period of 6 weeks thereafter.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer
Jayankondam.

+1cc to the Special Government Pleader Sr.68275



W.P.Nos.25888, 25892, 25899, 25906, 25913 & 25916 of 2018

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srg 15/10/2018