IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.29609 of 2018
and
W.M.P.No.34580 of 2018

India Medtronic Private Limited
Represented by its Manager Legal,
Mr.Pradnesh Warke
Registered Office at
1241, Solitaire Corporate Park,
Building No.12, Ghatkopar Andheri Link Road,
Andheri (E),
Mumbai - 400093 ... Petitioner

vs.

1. State of Tamil Nadu
   Represented by Secretary to Government,
   Commercial Taxes Department,
   Fort St.George,
   Chennai - 600009

2. Commissioner of Commercial Taxes,
   Ezhilagam, #5, Kamarajar Salai Chepauk,
   Chennai - 600005

3. The State Tax Officer,
   Pondy Bazaar Assessment Circle,
   Station No.48, Pasumpon
   Muthramalingadevar Selai,
   Chennai - 600028 ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records in File No. TIN/33021521671/2015-16 comprising the impugned Order No. TIN/33021521671/2015-16 dated 03.08.2018 read with the Order TIN/33021521671/2015-16 dated 11.09.2018 on the file of the third Respondent to pass orders afresh after granting an opportunity of personal hearing.

For Petitioner : Mr.Prasad Paranjape
for Mr.S.Muthuvenkataraman

For Respondents : Mrs.G.Dhana Madhri
Government Advocate (Tax)

O R D E R

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

2. The petitioner is aggrieved against the order of assessment dated 03.08.2018 passed in respect of assessment year 2015-16 and the consequential revised order under Section 84 of the TNVAT Act, 2006, dated 11.09.2018.

3. Heard, learned counsel appearing for the petitioner and the learned Government Advocate who takes notice for the respondents.

4. Though, the impugned order of assessment was made by considering several issues, the learned counsel appearing for the petitioner submitted that this Writ Petition is filed confining their relief only against the issue No.3, namely, mismatch issue. In other words, it is contended by the learned counsel for the petitioner that in respect of other issues, the petitioner is not disputing their liabilities wherever the Assessing Officer has found so. Insofar as the mismatch issue is concerned, the learned counsel sought to rely upon the decision rendered by this Court in JKM Graphics Solutions P.Ltd. v. C.T.O.(Mad) case reported in 2017(19) VST 343 and submitted that the Assessing Officer has not followed the procedures and guidelines issued in the said case, while deciding the mismatch issue. Therefore, he contended that the matter has to go back to the Assessing Officer to redo the assessment insofar as the mismatch issue is concerned.

5. Learned Government Advocate appearing for the respondents is not disputing the fact that the issue No.3 dealt with in the assessment year is the mismatch issue, which is covered by the decision rendered in JKM Graphics Solutions P.Ltd. Case.

6. Considering the above stated facts and circumstances and considering the fact that the very notice of proposal and the impugned order of assessment were issued much later to the order passed in JKM Graphics Solutions P.Ltd. Case, this Court is of the view that the Assessing Officer ought to have followed the guidelines/ directions issued in the said case while concluding

the assessment insofar as the mismatch issue is concerned. Therefore, this Court is inclined to remit the matter back to the Assessing Officer to redo the assessment only in respect of the mismatch issue is concerned, as the petitioner is not questioning the assessment order in respect of the other issues.

7. Accordingly, this Writ Petition is allowed and the impugned order of assessment is set aside only insofar as the findings rendered in respect of mismatch issue, namely difference between balance sheet and monthly return. Consequently, the Assessing Officer is directed to pass fresh order of assessment by following the procedures and guidelines issued in JKM Graphics Solutions P.Ltd. Case within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
State of Tamil Nadu
Commercial Taxes Department,
Fort St.George,
Chennai - 600009

2. The Commissioner of Commercial Taxes,
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3. The State Tax Officer,
Pondy Bazaar Assessment Circle,
Station No.48, Pasumpon
Muthramalingadevar Selai,
Chennai - 600028

+1cc to Mr.Muthuvenkatraman, Advocate SR.No.83146
+1cc to Government Pleader SR.No.32710

VSN II (CO)
GMY(17/12/2018)