IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.30979 of 2018
and
WMP.Nos.36119 & 36120 of 2018

M/s.Amman Auto Agency,
Represented by T.Sureshkumar,
Managing partner,
330/9, Salem Main Road,
Harur - 636 903. ..Petitioner

Vs

The State Tax Officer,
Harur Assessment circle,
PWD Quarter, Varnatheertham,
Harur - 636 903. ..Respondent

Writ Petition 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 respondents in TIN: 33653342257/2012-13 dated 09.10.2018 and quash the same as being without jurisdiction, invalid and illegal, insofar as the order relies on the web report of the commercial taxes department for the purpose of alleging suppression and reversing input tax credit.

For Petitioner : Mr.C.Venkatraman
For Respondent : Mr.Master Ganesh(T)
Government Advocate

O R D E R

Mr.Master Ganesh, learned Government Advocate takes notice for the respondent. 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 09.10.2018 passed in respect of assessment year 2012-2013.

3. It is contended by the petitioner that out of several issues raised in the notice of proposal, the mis-match issue was not dealt with by the Assessing Officer as per the directions/guidelines issued by this Court in WP.No.105 of 2016 etc., dated 01.03.2017, reported in JKM Graphics Solutions Vs. CTO, ([2017] 1999 VST 343). Insofar as other issues are concerned, the learned counsel for the petitioner

submitted that the petitioner is still having sufficient time to file an appeal before the First Appellate Authority and therefore, the assessment order passed on those issues will be agitated before the Appellate Authority separately.

4. On the other hand, the learned Government Advocate appearing for the respondent submitted that the petitioner has not filed any reply to the notice of proposal and therefore, they are not entitled to seek any indulgence from this court.

5. It is seen that the notice of proposal was issued on several issues such as loss on sales of old vehicle, miscellaneous receipts, sales of exempted commodities and purchase made based on web report. It is true that the notice of proposal dated 21.05.2018 was served on the petitioner and in spite of granting sufficient time to file their reply, the petitioner did not utilize such opportunity.

6. At the same time, considering the fact that this impugned order of the assessment came to the passed in the month of October 2018 much later to the decision made by this Court in WP.No.105 of 2016 etc., dated 01.03.2017, reported in JKM Graphics Solutions Vs. CTO, ([2017] 1999 VST 343), the question to be considered is as to whether the Assessing Officer has dealt with the mis-match issue by following the guidelines/directions issued by this Court in the above said case.

7. Perusal of the impugned order would show that the Assessing Officer has not followed such guidelines/directions before passing the impugned order of assessment insofar as the mis-match issue is concerned. Therefore, this Court is convinced to remit the matter back to the Assessing Officer to re-do the assessment only insofar as mis-match issue is concerned, by following the guidelines/directions issued by this Court in WP.No.105 of 2016 etc., dated 01.03.2017, reported in JKM Graphics Solutions Vs. CTO, ([2017] 1999 VST 343). However, such indulgence can be shown to the petitioner only by putting them on some terms, since they have not chosen to file any reply to the notice of the proposal.

8. Accordingly, this writ petition is allowed in part and the impugned order of assessment only in respect of mis-match issue alone is set aside. Consequently, the matter is remitted back to the Assessing Officer for re-doing the assessment, by following the procedure/guidelines issued by this Court in WP.No.105 of 2016 etc., dated 01.03.2017, reported in JKM Graphics Solutions Vs. CTO, ([2017] 1999 VST 343), subject to a condition that the petitioner pays 15% of the tax liability arising out of mis-match issue within a period of two weeks from the date of receipt of a copy of this order. Insofar as other issues are concerned, this Court is not expressing any view, as it is for the petitioner to agitate the same before the Appellate Authority, by filing regular appeal. The Assessing Officer shall pass fresh order of assessment insofar as mis-match issue is concerned, as

directed in this writ petition, within a period of eight weeks thereafter. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mk

To

The State Tax Officer,
Harur assessment circle,
PWD Quarter, Varnatheertham,
Harur - 636 903.

+ 1 cc to Mr.C. Venkatraman, Advocate Sr.79828
+ 1 cc to Special Government Pleader Sr.80556

W.P.No.30979 of 2018

KJ(CO)
EU(14/12/2018)