IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 30.11.2018
CORAM:
THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU
W.P.No.31545 of 2018
and
WMP.No.36764 of 2018

Tvl. MLM Agencies,
Rep. by its Sole Proprietor,
Mr.L.Muthuraj
No.3, Kathar Thottam, Nanganallur,
Chennai - 600 091. ..Petitioner

Vs

The Assistant Commissioner (ST),
Madipakkam Assessment Circle,
No.26, 4th main road,
Bhell Nagar, Medavakkam,
Chennai - 600 100. Government of Tamil Nadu ..Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records in respect of the Order No-TIN 33630991376/2015-2016/dt 24.09.2018 passed by the respondent and quash the same and direct the respondent to pass fresh order as per the guidelines passed by the Hon'ble High Court.

For Petitioner : Mr.S.Sivakumar

For Respondent : Mr.G.Dhana Madhri
Government Advocate

O R D E R

Mr.G.Dhana Madhri, learned Government Advocate takes notice for the respondent. By consent of the parties, this 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 24.06.2018 passed in respect of the assessment year 2015-2016.

3. Heard both sides.

4. The grievance of the petitioner before this Court in challenging the impugned assessment order is that the Assessing Officer has failed to follow the procedures/guidelines issued by this Court in a reported decision in JKM Graphics Solutions Vs. CTO, ([2017] 1999 VST 343), while considering the mis-match

issue. Therefore, it is contended that the assessment order has to be set aside and the matter has to be remitted back to the Assessing Officer to redo the assessment by following the above said decision.

5. Perusal of the impugned assessment order would show that the mis-match was not the only issue before the Assessing Officer and on the other hand, the assessment order was passed by considering four issues viz., Purchase suppression, Claim of ineligible ITC, Sales Suppression and Difference in sales value. Admittedly, the petitioner did not file any reply to the notice of proposal or utilized the opportunity of personal hearing. Though the learned Counsel for the petitioner contended that the petitioner was unwell at that relevant time, the affidavit filed in support of this writ petition says otherwise. It is stated that the petitioner's mother was unwell during March 2015 and therefore, the petitioner was busy in taking her to the hospital. But the fact remains that the notice of proposal was issued after three years i.e. on 06.04.2018 followed by other two notices dated 07.05.2018 and 21.05.2018. The personal hearing notice was also issued on 29.08.2018. The petitioner did not respond to any of the notices. Under such circumstances the petitioner is not entitled to challenge the impugned order before this Court only by relying on the decision made in JKM Graphics Solutions Vs. CTO, ([2017] 1999 VST 343), as the said decision was made only in respect of mis-match issue, whereas the impugned assessment order was made by considering other three issues also. Therefore, in my considered view, the petitioner instead of approaching this Court ought to have gone before the Appellate Authority, by filing regular appeal and canvass all the points as raised in this writ petition.

6. Accordingly, this writ petition is disposed of by granting liberty to the petitioner to file an appeal before the concerned Appellate Authority, within a period of two weeks, by complying with the other statutory requirements for filing such appeal. If any such appeal is filed within the time stipulated, the said Appellate Authority will consider and dispose the same on merits and in accordance with law, without reference to the period of limitation. This Court at this stage is not expressing any view on the merits of the impugned order, as it is for the Appellate Authority to consider and decide the same. No costs. Connected miscellaneous petition is closed.



Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

mk

To

The Assistant Commissioner (ST),
Madipakkam Assessment Circle,
No.26, 4th main road,
Bhell Nagar, Medavakkam,
Chennai – 600 100. Government of Tamil Nadu

+1cc to Mr.S.Sivakumar, Advocate, S.R.No.81993
+1cc to the Government Pleader, S.R.No.82714

W.P.No.31545 of 2018

rrs 06/12/2018