IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2018

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.33147, 33151, 33152, 33155 & 33156 of 2018
and
W.M.P.Nos.38454, 38458, 38459, 38460 & 38462 of 2018

Tvl.Cura Health Care Pvt.Ltd,
Rep. by its Authorised Signatory,
Plot No.A-32, Phase - I, MEPZ-SEZ,
Tambaram, Chennai-45. ...Petitioner in all W.Ps

Vs

The Assistant Commissioner (ST),
Guindy Assessment Circle,
46, Greenways Road,
Chennai - 28. ...Respondent in all W.Ps

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN:33770441794/2011-2012, TIN:33770441794/2014-2015, TIN:33770441794/2012-2013, TIN:33770441794/2013-2014, TIN:33770441794/2015-2016, dated 14.09.2018 respectively and quash the same as illegal, arbitrary and contrary to the principle laid down in the case of JKM Graphic Solution Pvt. Ltd., reported in 99 VST 343, rendered by this Court and further direct the respondent to furnish the break up details of mismatch report with invoice number, date, value, TIN number, name of the sellers and thereafter, pass order by providing sufficient opportunity.

For Petitioner : Ms.C.Rekha Kumari
(in all W.Ps)

For Respondent : Mr.M.Hariharan
Additional Government Pleader (Tax)
(in all W.Ps)

COMMON ORDER

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

2. These writ petitions are filed challenging the orders of assessment dated 14.09.2018 passed in respect of assessment years 2011-2012 to 2015-2016.

3. Though the orders of assessment were passed by considering various issues, the petitioner is confining the relief in these writ petitions only in respect of two issues viz.,mis-match and the purchase made from R.C. cancelled dealers.

4. The learned counsel for the petitioner submitted that insofar as mis-match issue is concerned, the same is covered by the decision of this Court reported in JKM Graphics Solutions Vs. CTO, ([2017] 99 VST 343), wherein, certain guidelines/directions are issued to the Assessing Officer, to be followed while dealing with mis-match issue. Therefore, she submitted that since the Assessing Officer in this case has not followed those guidelines/directions, the matter may be remitted back to the Assessing Officer to redo the assessment on the mis-match issue, by following the JKM Graphics case.

5. Insofar as the other issue viz., purchase made from RC cancelled dealers is concerned, the learned counsel for the petitioner submitted that at the time of purchase, those dealers were having valid registration and therefore, if such cancellation of registration was with retrospective effect, that cannot be put against the petitioner to deny his benefit of input tax credit.

6. Perusal of the impugned orders would show that they are passed in respect of several issues. However, as it is stated before this Court that these writ petitions are confined only in respect of two issues viz., mis-match issue and purchase made from RC cancelled dealers, and considering the fact that these two issues are already covered by the decision of this Court and further considering the fact that the impugned orders seem to have been passed not by following the procedures/guidelines issued by this Court in JKM Graphics case, this Court is inclined to remit the matter back to the Assessing Officer to redo the assessment in respect of those two issues viz., mis-match issue and purchase made from RC cancelled dealers.

7. Accordingly, all these writ petitions are allowed and the impugned orders are set aside. Consequently, the matter is remitted back to the Assessing Officer under the following terms and conditions:

(a) Insofar as the issue relating to mis-match is concerned, the Assessing Officer shall pass fresh orders of assessment after following the guidelines/directions issued by this Court in JKM Graphics Solutions Vs. CTO, ([2017] 99 VST 343).

(b) Insofar as the issue relating to purchase made from RC cancelled dealers is concerned, the Assessing Officer shall find out as to whether the cancellation of registration of other end dealers was with retrospective effect and as to whether those dealers were having valid registration at the time of purchase made by the petitioner.

(c) After considering the above aspects, the Assessing Officer is directed to pass fresh orders on merits and in accordance with law in respect of two issues viz., mis-match issue and purchase made from RC cancelled dealers.

(d) The Assessing Officer shall also give an opportunity of personal hearing to the petitioner.

(e) The whole exercise shall be done by the Assessing Officer within a period of twelve weeks from the date of receipt of a copy of this order.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mk

To

The Assistant Commissioner (ST),
Guindy Assessment Circle,
46, Greenways Road,
Chennai - 28.

+1 cc to M/s.C.Rekhakumari, Advocate, S.R.No.86450

+1 cc to the Special Government Pleader (taxes), S.R.No.87103

W.P.Nos. 33147, 33151, 33152,
33155 & 33156 of 2018

VBA(CO)
SSM(09/01/2019)