IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2019

CORAM :

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.5728 and 5732 of 2019 and
WMP.Nos. 6528, 6531, 6236 and 6537 of 2019

M/s.Usman Brother Agencies,
Rep. by its Proprietor -M.Syed Usman,
No.5-A, Bus Stand Building,
Gandhi Bazaar,
Gingee-604 202,
Villupuram District. ... Petitioner in both W.P.'s

..Vs..

The Deputy Commercial Tax Officer,
Gingee Assessment Circle,
Gingee,
Villupuram District. ... Respondent in both W.P.'s

Prayer in both W.P.'s: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records on the file of the Respondent in his impugned proceedings made in TIN Nos.33614740728/2013-14 and 33614740728/2015-16 dated 15.02.2017 in so far as levying penalty under Section 27 (3) of the Act is concerned and to quash the same as illegal and contrary to the scheme of the Act.

For Petitioner (in both W.P.'s) : Mr.S.Rajasekar
For Respondents (in both W.P.'s) : Mr.V.Haribabu Additional Government Pleader (Taxes)

C O M M O N O R D E R

These Writ Petitions have been filed challenging the impugned proceedings of the respondent in TIN Nos.33614740728/2013-14 and 33614740728/2015-16 dated 15.02.2017, levying penalty under Section 27 (3) of the Act and to quash the same as illegal and contrary to the scheme of the Act.

2.Prima facie, this Writ Petition is hit by substantial laches. However, on merits the additions in the impugned order are based wholly on the data from the intranet website in respect of which no opportunity has been granted to the petitioner. Moreover, the entire tax had been paid in full and what remains is only the penalty due.

3. This Court, by order dated 28.02.2019 had directed the petitioner to remit the entire amount of penalty, within a period of two weeks, as a pre-condition for considering the Writ petition.

4. Today, the learned counsel for the petitioner produces a challan confirming remittance of the entire amount of penalty. The receipt thereof is also confirmed by Mr.Haribabu.

5. In the light of the consent expressed by the learned counsel for the petitioner as well as the respondents, I take up the matter for final disposal.

6. This Court in the case of J.K.M.Graphics Solutions Pvt. Ltd., Vs. C.T.O., Vepery Assessment Circle, Chennai [(2017) 99 VST 343] considered the veracity of notices/assessments that had been framed solely on the basis of data obtained from the website of the Commercial Taxes Department. The Court has set aside the impugned notices/orders and remanded the matters to the respective Assessing Officers, to undertake assessment afresh after conducting thorough enquiry. A direction has also been given to the Commercial Tax Department to evolve a centralized mechanism to exclusively deal with cases of mismatch based on web data.

7. Mr.Haribabu, states that the mechanism is being formulated. However, since the same is yet to be implemented, the Commissioner has issued a circular in C.No.3/2019 directing the Assessing Officers when confronted with such issues to issue notice to keep proceedings for assessment alive and thereafter keep the assessment in abeyance till the mechanism is formulated and implemented in full.

8. In the light of the aforesaid discussion, there being no dispute that the issue on merits is covered by the order of this Court in J.K.M.Graphics Solutions Pvt. Ltd., Vs. C.T.O., Vepery Assessment Circle, Chennai (supra) and also the fact that the petitioner paid the entire tax as well as penalty and in the interests of justice, the impugned order is set aside and the Assessing authority is directed to take the proceedings denovo and in accordance with law, after affording an opportunity of hearing to the petitioner.

9.These Writ Petitions are disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Deputy Commercial Tax Officer,
Gingee Assessment Circle,
Gingee,
Villupuram District.

+2ccs to Ms.R.Hemalatha, Advocate, S.R.No.30781
+1cc to the Government Pleader (Taxes), S.R.No.30905

W.P.Nos.5728 and 5732 of 2019

VBA(CO)
vrn 20.05.2019