IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2019

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THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

Writ Petition Nos.6137 & 6140 of 2019
& W.M.P.Nos.6966 & 6970 of 2019

Tvl.Vasanth Traders,
No.75/98A Chetpet Road,
Vandavasi 604 408,
Thiruvannamalai District .. Petitioner in both W.Ps

vs.

The State Tax Officer (FAC),
Vandavasi,
Thiruvannamalai District .. Respondent in both W.Ps.

Common Prayer:- Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records in respect of the proceedings TIN No.33114603360/2013-14 and 2014-15, respectively (both) dated 19.04.2018 of the respondent under the Tamil Nadu Value Added Tax Act 2006 and to quash the same.

For Petitioner in both W.Ps.:Mr. Adithya Reddy
For Respondent in both W.Ps.:Mr. V.Haribabu,
AGP., (Taxes)

C O M M O N O R D E R

Mr.Adithya Reddy, learned counsel appearing for the petitioner, in both the writ petitions, states that the impugned orders are dated 19.04.2018; the orders, though received on a date proximate to the date of order, have been allowed to lie unattended and no action has been taken either by way of filing writ petition or by way of filing statutory appeal. On merits, he states that the issue on merits relates to an adjustment made to the monthly returns filed by the petitioner on the basis of the purchasing dealers' returns, particularly Annexure II thereof.

2. Mr.V.Haribabu, learned Additional Government Pleader, takes notice for the respondent in both the writ petitions.

3. Since the matter falls within a limited compass, I propose to dispose the writ petition, at the admission stage

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itself, by express consent of the learned counsel appearing for both sides. Though no counter has been filed by the respondents, the learned Additional Government Pleader appearing for the respondents would point out that there is significant laches in the matter as well as non-compliance by the petitioner to the notices issued calling for objections.

4. Though I agree with the submissions made by the learned Additional Government Pleader appearing for the respondent in regard to the lapses on the part of the petitioner, the merits of the matter cannot be ignored by this Court. The sole adjustment made relates to an alleged mismatch of the details furnished in the monthly returns of the petitioner, viz-a-viz., the details available as per the web report of the selling dealer.

5. This Court, while considering the assessments made based on web report, has passed a detailed order in W.P.No.105 of 2016 etc. batch, dated 01.03.2017, in the case of JKM Graphics Solutions Private Limited v. Commercial Tax Officer, Vepery Assessment Circle, reported in [2017] 99 VST 343 (Mad) wherein, at paragraph Nos.56 to 58, it has been observed as follows::-

> '56.The procedure adopted under the Maharastra VAT Act appears to be a more reasonable procedure, the Rules have been so designed to constitute independent authorities, who will in exercise jurisdiction to dispose of the objections etc. However, this Court cannot legislate nor direct the State to legislate in a particular passion and it is for the state to bring about and appropriate rules and set procedures so that when discrepancy is noted while comparing the return with that of the figures available with the Department in their web portal, there should be an exercise carried out by the department within its level before calling upon the dealer to show cause. This can be achieved only if there is a centralised mechanism and if the present practice is allowed to prevail, it would only result in multiplicity of proceedings with more number of cases pending before the Courts and Appellate forums, thus jeopardizing the interest of revenue. Therefore, it is high time the Principal Secretary and Commissioner of Commercial Taxes in consultation with him officers lays out a detailed procedure as to how to take forward cases of mismatch, evolve a central mechanism, which can go into these aspect and furnish details in full form to the respective Assessing Officers, who can decide for themselves as to whether there is a case made out to call upon their dealer to explain. If this centralized mechanism is not put in place exclusively for such

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purpose, it would result in notices and orders being issued by the respective Assessing Officers without even the knowledge of the Assessing Officer of the other end dealer resultantly no action being taken against other end dealer, assuming, he is at fault. Therefore, it is high time the Department wakes up and stops the one way approach and examine the matter in a holistic manner so that the defaulting dealer is brought to books.

57. Hence, for all the above reasons, all the Writ Petitions are allowed and the notices/orders either original or appellate or revisional are set aside and the matters are remanded to the respective Assessing Officers, to undertake a fresh exercise by conducting a thorough enquiry in consultation with the Assessing Officers of the other end dealer for which purpose the Commissioner of Commercial Taxes shall empower the Assessing Officers to seek information from other circles as well and in the mean time to evolve a centralized mechanism to exclusively deal with the cases of mismatch and while doing so, the Principal Commissioner shall take note of the procedures adopted by the other States, more particularly, in Maharastra, Gujarat and Delhi and if any statutory amendments have to be made, make appropriate recommendations to the State Government, and till then to devise a procedure which is fair and reasonable and afford an opportunity to the dealer to putforth his case and establish that he is entitled to the concession/set-off availed.

58. Since these Writ Petitions have been allowed and the impugned orders have been set aside and the matters have been remanded for fresh consideration the petitioners/dealers are not entitled to raise the plea of limitation, when fresh show cause notices are issued and they are directed to submit their explanation to enable the Assessing Officers to adjudicate their case. The Court places on record the valuable assistance of Ms.R.Charulatha Advocate of M/s.Lakshmikumaran and Sridharan Attorneys. Consequently, connected Miscellaneous Petitions are closed. No costs.'

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6. In the aforesaid circumstances and solely, for the reason that the merits have been dealt with extenso by this Court, in the aforesaid decision, cited supra, I am inclined to interfere with the impugned assessments, putting the petitioner to terms.

7. The impugned orders of assessment (both) dated 19.04.2018 will stand set-aside upon condition that the dealer / petitioner will remit 50% of the demands raised within a period of two weeks from today. The petitioner will appear before the Assessing Officer on 27.03.2019 at 02.30 pm, and upon production of the proof of remittance as aforesaid, the assessments shall be taken up for adjudication and completed de novo after adherence to the principles of natural justice, within a period of four weeks from the date of conclusion of the personal hearing.

8. The writ petitions are disposed of, on the above terms. Consequently, the connected WMPs are closed. There shall be no order as to costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

srk

To

The State Tax Officer (FAC),
Vandavasi,
Thiruvannamalai District

+1 CC to The Spl. Govt. Pleader (T) sr 22476.

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SSD(CO)
SP(01/04/2019)

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