IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 15.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.34622 of 2015
and
M.P.Nos.1 and 2 of 2015

M/s.A1 Glass House,
Represented by its Partner
V.Muthukumar,
No.8, Nellikuppam Main Road,
Cuddalore,
Cuddalore District. ... Petitioner

Vs

The Commercial Tax Officer,
Cuddalore Town,
Cuddalore,
Cuddalore District. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records on the file of the Respondent in its impugned proceedings made in TIN:33954381738/12-13 dated 08.06.2015 and quash the same.

For Petitioner : Ms.R.Hemalatha

For Respondent : Mrs.Dhanamadhri, GA

ORDER

A learned Judge of this Court in the case of JKM Graphics Solutions Private Limited Vs. Commercial Tax Officer, Vepery Assessment Circle, Chennai reported in 2017 (99) VST 343 (Mad), had considered the claim of the dealers in connection with Input Tax Credit reversal on an alleged mis-match between their returns and the returns filed by the sellers. While the batch of writ petitions came to be allowed, the High Court had held as follows:

> "Admittedly, in the instant case, there is no challenge to the statutory provisions and the complaint of all the dealer is largely on the

procedure adopted by the respective assessing officers. The principal Secretary and Commissioner of Commercial Taxes was conscious of the problems faced by the dealers as complaints were received which had lead to issuance of a circular as early as on April 1, 2015. The directions contained in the said circular are very pointed direction, but it is sad to note that the circular remains only on paper and seldom assessing officers follow the circular resulting in several assessments being set aside by the court and remanded for denova consideration. Thus, this court is fully convinced that the procedure adopted by the respondents, assessing officers in all these cases are half baked attempts, which have not yielded results and these cases are before this court or before the appellate authorities and all that the assessing officers can record is that they have issued show-cause notices or passed orders reversing the input-tax credit with no appreciable impact on the revenue collection.

The procedure adopted under the Maharashtra 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 to call upon their dealer to explain. If this centralized mechanism is not put in place exclusively for such purpose, it would result in notices and orders being issued by the respective assessing officers without even the knowledge of the assessing officers 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.

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 Maharashtra, 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 put forth his case and establish that he is entitled to the concession/set-off availed.

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 a 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."

2. The issue involved in this writ petition is also identical to the issued involved in the earlier writ petitions in WP.Nos.3680 & 3683 of 2019. As such, the present writ petition also deserves consideration in the light of the aforesaid decisions.

3. At this juncture, the learned Government Advocate

submits that as against the order in JKM Graphics Solutions case, a review petition has been filed and the same is pending before this Court. It is needless to point out that in case the earlier order in JKM Graphics Solutions case is modified in the review petition, the respondent will be bound by any such modifications made therein.

4. Accordingly, the present writ petition stands disposed of, by setting aside the order of assessment under challenge in this writ petition. Consequently, the assessment shall be re-done in the manner indicated in JKM Graphics Solutions (cited supra) on issuance of a fresh show cause notice by the Assessing Officer and the Assessing Officer shall scrupulously follow the observations made in the JKM Graphics Solutions case. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

hvk

To

The Commercial Tax Officer,
Cuddalore Town,
Cuddalore, Cuddalore District.

+1cc to Mr.R.Hemalatha, Advocate, S.R.No. 59883
+1cc to the Special Government Pleader, S.R.No.60065

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and
M.P.Nos.1 and 2 of 2015

KK(CO)
GN(07/08/2019)