IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2019

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.35900 to 35905 of 2016

M/s.Om Muruga Tiles and Granites,
Rep by Proprietor,
No.4/4, Jawaharlal Nehru Road,
Vadapalani, Chennai - 600 026. ... Petitioner in all W.Ps.

vs

The Commercial Tax officer,
Vadapalani Assessment Circle,
Chennai. ... Respondent in all W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the connected records relating to the proceedings of the Respondent herein made in TIN 33861464561/2009-10, TIN 33861464561/2010-11, TIN 33861464561/2011-12, TIN 33861464561/2012-13, TIN 33861464561/2013-14 and TIN 33861464561/2014-15 dated 10.03.2016 and quash the same.

For Petitioner : Mr.Adithya Reddy in all W.Ps.

For Respondent : Mr.V.Haribabu Additional Government Pleader in all W.Ps.

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C O M M O N   O R D E R

By this common order, all the six Writ Petitions are being disposed.

2.The learned counsel for the petitioner fairly submits that the issue is covered by the decision of this Court rendered in JKM Graphics Solutions Private Limited vs Commercial Tax Officer, Vepery Assessment Circle, Chennai, (2017) 99 VST 343 (Mad).

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3.In the above case, the respondent had called upon the petitioner to reverse the proportionate inputs tax credit due to mismatch in the returns between the petitioner and its suppliers, its buyers, etc. The operative portion of the order reads as under:-

> 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 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.

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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.

4.The learned Additional Government Pleader (T) for the respondent submits that a review petition has been filed on certain other aspects arising out of the above order. He further submits that the Government has also framed a scheme and has kept the implementation of the scheme pending. He submits that as and when the scheme is implemented, appropriate orders will be passed in terms of the scheme.

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5.In view of the same, all the six Writ Petitions stand disposed. The officers shall pass appropriate order as and when the scheme comes into force. No cost.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

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To

The Commercial Tax officer,
Vadapalani Assessment Circle,
Chennai.

+1cc to Mr.Adithya Reddy, Advocate, SR.No.102975.
+1cc to Government Pleader, SR.No.203281.

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