IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.30907 of 2019
and
W.M.P.No.30997 of 2019

Hepzibah Darling
Prop. M/s.Bethal Trading Company
No.10, Paul Daniel Street
Nagerkoil, Kanyakumari District. ...Petitioner

vs.

State Tax Officer
Thiruvanmiyur Assessment Circle
141, Perungudi, Chennai-600 096. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondent in TIN.33220924429/2012-2013 and quash the order dated 27.09.2019 passed therein insofar the issue relating to reversal of ITC Tax and penalty is concerned.

For Petitioner : Mrs.Hema Muralikrishnan
For Respondent : Mrs.G.Dhana Madhiri
Government Advocate

O R D E R

Mrs.G.Dhana Madhri, learned Government Advocate takes notice for the respondent. By consent of both parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order of assessment dated 27.09.2019 relevant to assessment year 2012-2013.

3. Heard both sides.

4. The Assessing Officer has taken up two issues for consideration. In respect of first issue relevant to other income received of Rs.62,396/-, the Assessing Officer found that

the dealer has filed sales invoice and thus, the dealer is not liable to pay tax and accordingly, deleted Rs.9,048/- from the tax liability. Therefore, the petitioner is not having any grievance against the said issue. The second issue pertains to mis-match. Though the Assessing Officer referred to the Circular issued by the Commissioner of Commercial Taxes dated 18.01.2019 and found that the reversal of ITC of mis-match to the tune of Rs.1,93,251/- is to be kept until further instructions, however, issued the impugned demand and also by imposing penalty towards such reversal of ITC arising out of mis-match issue. Needless to say that the mis-match issue has to be dealt with and decided by following the guidelines/procedures issued by this Court in JKM Graphics Solutions Vs. CTO, ([2017] 99 VST 343). Therefore, I find that the second issue viz., mis-match dealt with by the Assessing Officer is not in accordance with the above said decision of this Court.

5. Accordingly, the Writ Petition is allowed and the impugned order of assessment insofar as imposition of tax due on the reversal of ITC alone is set aside. Consequently, the matter is remitted back to the respondent/Assessing Officer to redo the assessment by following the guidelines/directions issued in JKM Graphics case. The whole exercise shall be done by the respondent/Assessing Officer as expeditiously as possible. Connected miscellaneous petition is closed. No costs.

-s/d-
Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

mk
To
State Tax Officer
Thiruvanmiyur Assessment Circle
141, Perungudi, Chennai-600 096.

+1 CC to The Spl. Govt. Pleader(T) sr 91288
+1 CC to Mr.L. Muralikrishnan, Advocate sr 91003.

W.P.No.30907 of 2019

PPA(CO)
SP(29/11/2019)