**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 31.07.2019**

**CORAM**

**THE HONOURABLE DR.JUSTICE ANITA SUMANTH**

**W.P(MD)No.19620 of 2016**
**and**
**W.M.P.(MD)No.14143 of 2016**

Tvl.Gowmari Traders,
Represented by its Proprietrix,
M.Selvakumari,
W/o.Murugesan,
No.12/5-A, Venkatachalapathi Kovil Street,
Bodinayakanur,
Theni District-625 513. ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The Assistant Commissioner (CT),
Bodinayakanur Assessment Circle,
Commercial Tax Office,
No.17, Subburaj Nagar,
Bodinayakkanur,
Theni District-625 513. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of the second respondent in TIN No.33365081869/2013-14/CST No.138482 dated 22.08.2016 and quash the same and consequently direct the second respondent to re-do the assessment after providing the copies of the documents relied upon and by giving due opportunity to file objection and for personal hearing.

For Petitioner : Mr.R.Veeramanikandan

For Respondents : Mr.A.Thiyagarajan,
Government Advocate.

**ORDER**

The only issue that arises in this case is whether there was a mismatch between the details of transactions between the profit and loss account of the assessee and the Web Report. Notice dated 22.07.2016 issued by the second respondent, pursuant to an order of Enforcement Wing Officer on 06.03.2015 sets out alleged defects being differences between interstate sales as per P&L and Web Report and as per the cross verification of petitioners' financials with MIS report.

2.In response, on 25.07.2016, the petitioner has sought copies of the Web Report and MIS report along with the returns and details of the annexures of the third party dealers in order to substantiate and re-conciliate the differences with its own accounts. The aforesaid response has been received by the Assessing Officer, despite which, he concludes the assessment vide impugned order dated 22.08.2016 merely confirming the proposals stating that no reply has been filed by the assessee.

3.Apparently, there is a violation of principles of natural justice, since the objection filed by the assessee has not been considered and neither has the mandatory personal hearing been afforded. The impugned order is thus set aside and the matter remanded to the file of the Assessing Officer to be re done *de novo*.

4.The Additional Chief Secretary / Commissioner of State Tax has issued a Circular bearing No.3/2019 dated 18.01.2019 wherein he issues the following, among other instructions:

> '.......
>
> *a) Where the proposal received from the Enforcement Wing/ISIC involves only system generated mismatch of ITC report, the procedure to be followed will be notified shortly and such cases can be dealt with separately.*
>
> *b) If the Assessing Authority is of the view that the Audit report or Inspection proposals received from Enforcement Wing or proposals received from ISIC are not in conformity with the Law or the established principles set by various higher Judicial Forums and if he wishes to deviate from the proposals either partly or wholly, he himself can finalize the assessment or revision of assessment without seeking approval from the Enforcement Wing/ISIC Authorities who had approved the proposals, and reasons for the same to be recorded.*
>
> *c) Where a proposal received from the Enforcement Wing/ISIC involves mismatch of ITC and*

*other issues, the issues other than mismatch of ITC can be finalized by the assessing authority leaving the mismatch issue pending until a mechanism in this regard is evolved. However, notices shall be issued for all the cases involving mismatch of ITC to keep the issue alive until it is resolved and a list of such cases shall be maintained in the respective assessment circle, Territorial JC and DC Offices. A monthly abstract of such cases along with revenue involved shall be prepared and made available to higher authorities for verification as and when called for.*

*d) The Assessing Authority shall send a copy of the assessment or revision order in which the proposals received from the Enforcement Wing/ISIC are given effect, to the Joint Commissioner (Enforcement/ISIC) and Territorial Deputy Commissioner and immediately on passing the order of assessment or revision of assessment. The Joint Commissioner (Enforcement/ISIC) and Territorial Deputy Commissioner and immediately on passing the order of assessment or revision of assessment. The Joint Commissioner (Enforcement/ISIC) or Deputy Commissioner (Territorial), as the case may be, shall in case, where the order of the Assessing Officer reflects any deviation from the proposals received from Enforcement/ISIC without valid reason or legal backing, bring such cases to the notice of the jurisdictional Joint Commissioner (Territorial) for taking further action.*

*e) The Joint Commissioners (Territorial) shall examine such cases and if he considers it as a fit case for revision, he may initiate action under Section 53 of the TNVAT Act, 2006.*

*f) All the deviation proposals pending with the Enforcement Wing/ISIC as well as with the Territorial Wing for various reasons including cases remanded by the appellate/judicial forums shall be returned immediately to the assessing authorities concerned for implementation.*

*g) All the Joint Commissioners (Territorial) are instructed to ensure that the entire pending proposals received from Enforcement Wing/ISIC be completed within three months from the issue of this circular, if there is no legal impediment. This three months period would also apply to those cases which are pending only because of mismatch ITC issue and therefore, all issues other than mismatch of ITC shall also be implemented within* *the above said period of three months. To Expedite the implementation of proposals received from Enforcement Wing/ISIC, the Joint Commissioners (Territorial) may distribute the pending proposals evenly among the assessing authorities working under their control irrespective of the jurisdiction.*

*h) In respect of those cases where legal issues like stay or similar issues are pending before any legal forum, the Joint Commissioners (Territorial) shall list out those cases on the basis of the issue involved for bringing it to the notice of the Government Law Offices for early disposal wherever possible. This exercise shall be completed within three months from the date of issue of this circular and copies of such lists shall be sent to this office on completion of the above task. It may also be noted that a monthly report on efforts taken to get the issue resolved through the Government Law Officers and the status of such cases be sent to this office from time to time.*

*i) The cases which involve only mismatch of ITC shall be reported separately in the statistics along with revenue involved, for which the format of statistics is being amended suitably.'*

5.In the light of the aforesaid instruction, proceedings for assessment, *de novo*, shall be finalised by the Authority, as and when an appropriate mechanism is put in place for adducing cases of web mis-match.

6.In the light of the aforesaid, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(AD-II)

/TRUE COPY/

Sub Assistant Registrar

To

1.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The Assistant Commissioner (CT),
Bodinayakanur Assessment Circle,
Commercial Tax Office,
No.17, Subburaj Nagar,
Bodinayakkanur,
Theni District-625 513.



+1 CC to M/s.B.ROOBAN, Advocate ( SR-79162[F] dated 01/08/2019 )

**W.P(MD)No.19620 of 2016**
**31.07.2019**

**ps**
JM/18.09.2019/5P/4C