IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2020

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.19175 of 2013
and
MP.Nos.1 & 2 of 2013

M/s. Sri Murugan Paper Cones,
Rep.by its Proprietor - M.Arthanareeswaran,
No.167-A/4, Velur Paramathi Road,
Karattupalayam, Tiruchengode,
Namakkal District. ... Petitioner

Vs.

The Commercial Tax Officer (FAC),
Tiruchengode (Town),
Tiruchengode. ... Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the impugned proceedings of the respondent in TIN:33213183904/2011-12 dated 18.03.2013, quash the same as illegal and violative of the principles of natural justice and the provisions of the Act.

For Petitioner : Mrs.R.Hemalatha

For Respondent : Mr.A.N.R.Prathap, GA (T)

O R D E R

Challenging the notice dated 18.03.2013 issued by the respondent relating to the assessment year 2011-12, the petitioner has come up with this writ petition. In the impugned notice, it was proposed to reverse the eligible input tax credit as claimed by the petitioner and levy tax along with penalty.

2.Today, when the writ petition was taken up for consideration, the learned counsel for the petitioner as well as the learned counsel for the respondent submitted that the issue involved herein is covered by the decision rendered in JKM

Graphics Solutions Private Limited v. Commercial Tax Officer [2017 SCC OnLine Mad 669:(2017)99 VST 343], wherein this Court has allowed the writ petitions therein in the following terms:

> "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.
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> 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...."

It is also submitted that thereafter, the Commissioner of State Tax, Chennai, has issued a circular bearing No.3/209 (Q1/39643/2018) dated 18.01.2019, as regards the instructions for implementation of Inspections and VAT audit proposals, wherein at clause (c), it is stated as follows:

> "(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."

Thus, according to the learned counsel, this writ petition is liable to be allowed.

3.In the light of the aforesaid order passed by this Court as well as the subsequent circular issued by the Commissioner of State Tax, this Court is inclined to set aside the notice impugned herein and is accordingly set aside and this writ petition stands allowed. The matter is remitted back to the respondent, who inturn, shall act strictly in accordance with the aforesaid order passed by this Court as well as the instructions given by the Commissioner of State Tax, vide circular dated 18.01.2019. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer (FAC),
Tiruchengode (Town),
Tiruchengode.

+1cc to M/s.R.Hemalatha, Advocate, Sr.No.20808
+1cc to Special Government Pleader(Taxes), Sr.No.21797

W.P.No.19175 of 2013
and
MP.Nos.1 & 2 of 2013

RK(CO)
GS(28/05/2020)