IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2020

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.NO.22961 OF 2012

M/s.Alayam Traders,
Rep.by its Proprietrix - Kalai Selvi,
No.4, Ponniamman Koil Street,
Cheyyar,Vellore District. ... Petitioner

-vs-

The Commercial Tax Officer,
Vandavasi,
Vellore 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 of the Respondent in his proceeding in TIN:33444601869/2010-11 dated 13.07.2012, quash the same.

For Petitioner : Mr.S.Rajasekar

For Respondent : Mrs.G.Dhana Madhri,
Government Advocate (Taxes)

O R D E R
(through video conference)

Heard Mr.S.Rajasekar, Learned Counsel for the Petitioner and Mrs.G.Dhana Madhri, Learned Government Advocate (Taxes) for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2.The Writ Petitions challenges the Notice No. TIN: 33444601869/2010-11 dated 13.07.2012 issued by the Respondent on the verification of the sales transactions during the year 2010-2011 and claiming payment of the differential amount of tax due with interest and penalty.

3.In this regard, it is brought to notice by the Learned Counsel for the Petitioner that a batch of Writ Petitions filed by similarly placed persons on this aspect of the matter came up for consideration before this Court in J.K.M.Graphics Solution Private Limited -vs- Commercial Tax Officer, Chennai (Order dated 01.03.2017 in W.P. No. 105 of 2016) and after analyzing in detail the rival contentions raised by parties and referring to the earlier decisions governing the issue, it has been held as follows:-

> "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."

It is further informed that in furtherance to the aforesaid ruling of this Court, the Commissioner of Sales Tax has issued Circular No. 3/2019/Q1/39643/2018 dated 18.01.2019 providing the following instructions to be followed by the authorities under the Act, as explained below:-

"(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) 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 Officers 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 involved 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."

4. Having regard to the aforesaid legal position, the impugned order, which cannot be sustained, is set aside. The concerned assessing officer shall issue fresh show cause notice with all required details in respect of levy of tax for mismatch invoices and the Petitioner shall be entitled to submit its explanation within the prescribed time. It is made clear that the Petitioner shall not be entitled to raise any plea of limitation when the fresh show cause notice is issued. It shall be incumbent upon the assessing officer to afford opportunity of hearing to the Petitioner following the prescribed procedure as mentioned earlier, and pass reasoned orders dealing with each of the contentions raised on merits and in accordance with law and communicate the decision taken under written acknowledgment.

5. In the result, the Writ Petition is disposed on the aforesaid terms. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vjt

To

The Commercial Tax Officer,
Vandavasi,
Vellore District.

+1cc to the Special Government Pleader(T), S.R.No.35577

W.P.No.22961 of 2012

SJ(CO)
CS/20/11/2020