IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2020

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.27648 and 27649 of 2012
and
MP.Nos.2 & 2 of 2012

M/s. Elite Furniture Mart
Rep.by its proprietor - K.J.Antony,
39, Variety Hall Road,
Coimbatore - 1. ... Petitioner in both WPs.

Vs.

The Assistant Commissioner (CR)(FAC),
N.H.Road Circle, Coimbatore - 18.
... Respondent in both WPs.

Petitions 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:33541900073/2007-08 and TIN:33541900073/2008-09 dated 10.09.2012, quash the same as illegal and violative of the provisions of the Act in so far as it pertains to the reversal of input tax credit on a turnover of Rs.3,86,37,718/- and Rs.4,28,32,660 respectively.

For Petitioner : Mrs.R.Hemalatha, in both WPs.
For Respondent : Mr.A.N.R.Prathap, GA in both WPs.

COMMON ORDER

Challenging the notices dated 10.09.2012 issued by the respondent relating to the assessment years 2007-08 and 2008-09, the petitioner has come up with these writ petitions. In the impugned notices, 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 petitions were 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, these writ petitions are 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 notices impugned herein and are accordingly set aside and these writ petition stand allowed. The matters are 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

AV

To
The Assistant Commissioner (CR)(FAC),
N.H.Road Circle, Coimbatore - 18.

+1cc to MS.R.Hemalatha, Advocate, in C.A.S.R.No.20806/2020
+1cc to Special Government Pleader (Taxes) in CASR.No.21793/2020

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CO/RJI
adl/27/05/2020