IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.10.2020

Coram

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.15213, 15237, 15240, 15231, 15232 and 15236 of 2020

and WMP.Nos.19054, 19057, 19058, 19063, 19064 and 19066 of 2020

Om Electronics
rep. by its proprietor
B.Manthiram ... Petitioner in all WPs

vs.

State Tax Officer,
Koyembedu Assessment Circle,
No.4/109, First Floor,
Bangalore NH Road, Varadharajapuram,
Chennai - 600 123.
... Respondent in all WPs

PRAYER in all WPs : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarfied Mandamus to call for the impugned notice of the respondent passed in TIN/33761342881/2009-10, 2013-14 2014-15, 2010-11 2011-12 and 2012-13, dated 30.07.2020 (received on 17.09.2020) and quash the same and further direct the respondent to defer the issue of notice till the central mechanism is framed on the mismatch issue as per the order dated 01.03.2017 of this Hon'ble Court since reported in 99 VST 343 in the matter of M/s.JKM Graphic Solutions private Limited V. CTO.

For Petitioner : Mr.N.Murali in all WPs.

For Respondents : Ms.G.Dhanamadhri,
Government Advocate in all WPs.

C O M M O N O R D E R

Ms.G.Dhana Madhiri, learned Government Advocate accepts notice for the respondents and is armed with instructions to proceed with the matter. By consent of both parties, these Writ Petitions are taken up for final disposal even at the stage of admission.

2. These Writ Petitions have been filed challenging pre-assessment notices for the Assessment Years 2009-10, 2013-14 2014-15, 2010-11 2011-12 and 2012-13, all dated 30.07.2020 on the ground that they are in violation of the principles laid down by this Court in the case of JKM Graphics Solutions Private Limited V. Commercial Tax Officer (99 VST 343) .

3. I am of the categoric view that these Writ Petitions are pre-mature. It is true that the Officer has called upon the petitioner/assessee to appear and submit such details as may be available with it to substantiate the alleged mismatch between the details contained in the annexures to the petitioners' returns vis-a-vis the details contained in the annexures to the returns filed by the supplying/purchasing party dealers.

4. This Court in JKM Graphics (supra) has held that cases of mismatch should be addressed in a scientific manner and has also directed the setting up of a central mechanism to facilitate sharing of data inter se assessing officers to rule out mismatch of factual particulars. It appears that this central mechanism is yet to be constituted.

5. Be that as it may, and pending constitution of such facility, the Assessing Authorities are not barred from obtaining details on case specific basis and furnishing the same to an assessee for its response. What is relevant is that there should be a complete and total transparency in regard to the materials/data relied upon by the Department in framing of assessments and the sharing of the materials with the assessee prior to completion of assessment. I hardly need to reiterate that the ratio of the decision in JKM Graphics (supra) binds the Department strictly. The Commissioner has, in Circular No.3 of 2018 dated 18.01.2018 directed all assessing officers to keep assessments involving the issue of mismatch pending till such time a central mechanism is put in place. However, the directions will not stand in the way of an officer continuing all efforts to obtain complete details of sales/purchases from the assessing officers of the third party dealers and, in cases of mismatch, collate all relevant material including data uploaded on the website of the Department and supply the same to the assessee, solicit and receive its response, hear the assessee and finalize the assessment in strict compliance of the decision in JKM Graphics (supra) and in accordance with law.

6. In the present matter, Ms.Madhiri, on instructions, confirms that the details of third party dealers have, in fact, been, collated and are available with the Officer. In such circumstances, proceedings may well proceed and no longer await setting up of a central sharing mechanism, as its purpose stands achieved in this matter.

7. With the above observations, these Writ Petitions are dismissed as pre-mature. The petitioner will appear before the Assessing Officer on 26.11.2020 at 10.30. am. pursuant to the impugned show cause notices. No further notice need be issued in this regard. Further proceedings will be conducted, either over video conference or physical hearing, strictly in line with the observations in the case of JKM Graphics (supra) as also made in this order. No costs. Connected Miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

The State Tax Officer,
Koyembedu Assessment Circle,
No.4/109, First Floor,
Bangalore NH Road, Varadharajapuram,
Chennai - 600 123.

+6ccs to M/s.N.Murali, Advocate Sr.35096
+1cc to the Government Pleader Sr.35130

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srg 04/12/2020