IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	27.08.2020
Pronounced on	01.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.7144 to 7147 of 2016
and
W.M.P.Nos.6348 to 6351 of 2016

M/s.Farida Leather Company,
Rep. By its Partner,
29-A, Perianna Masitry Street,
Periamet, Chennai - 600003. ...Petitioner in all WPs

Vs

Commercial Tax Officer,
Periamet Assessment Circle,
Chennai - 600006. ...Respondent in all WPs

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, to call for the records of the respondent and to quash the assessment proceedings in TIN No.33260420686/2010-11, dated 29.09.2015, TIN No. 33260420686/2011-12, dated 29.09.2015, TIN No.33260420686/2012-13 dated 30.09.2015 and TIN No.33260420686/2013-14 dated 30.09.2015 as illegal and direct the respondent to verify the accounts of the petitioner for the years 2010-11, 2011-12, 2012-13 and 2013-14 based on the information obtained from the departmental WEBSITE for the mismatch of the alleged purchases of the petitioner based on the various judicial pronouncements of the Madras High Court.

For Petitioner : Mr.C.Baktha Siromoni
(in all WPs)

For Respondent : Mr.R.Swarnavel
(in all WPs) Government Advocate

COMMON ORDER

Today, the matter is called through Video Conferencing. By consent of both the parties, these Writ Petitions are taken up for final disposal.

2. The returns filed by the petitioner for the years 2010-11, 2011-12, 2012-13 and 2013-14 was originally accepted and they were deemed to have been assessed for the respective years. Subsequently, the Enforcement Officers of the Commercial Tax Department had conducted inspection and VAT Audit and during the course of the audit, the defects with regard to mismatch in their returns vis-a-vis the other dealers was notice and accordingly, the impugned assessment orders came to be passed. The assessment orders in all these Writ Petitions are liable to be set aside on two grounds.

3. Firstly, in the case of JKM Graphics Solutions Private Limited Vs. Commercial Tax Officer, Vepery Assessment Circle, Chennai reported in 2017 (99) VST 343 (Mad), this Court had considered the claim of the dealers in connection with Input Tax Credit reversal on an alleged mismatch between their returns and the returns filed by the sellers. While the batch of writ petitions came to be allowed, the High Court had held as follows:

> "Admittedly, in the instant case, there is no challenge to the statutory provisions and the complaint of all the dealer is largely on the procedure adopted by the respective assessing officers. The principal Secretary and Commissioner of Commercial Taxes was conscious of the problems faced by the dealers as complaints were received which had lead to issuance of a circular as early as on April 1, 2015. The directions contained in the said circular are very pointed direction, but it is sad to note that the circular remains only on paper and seldom assessing officers follow the circular resulting in several assessments being set aside by the court and remanded for denova consideration. Thus, this court is fully convinced that the procedure adopted by the respondents, assessing officers in all these cases are half baked attempts, which have not yielded results and these cases are before this court or before the appellate authorities and all that the assessing officers can record is that they have issued show cause notices or passed orders reversing the input-tax credit

with no appreciable impact on the revenue collection.

The procedure adopted under the Maharashtra 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 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 officers 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.

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 Maharashtra, 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 put forth his case and establish that he is entitled to the concession/set-off availed. 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 a 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."

4. The findings and observations made in JKM Graphics Solutions case (supra) are identical to the issue of mismatch in the present impugned orders and therefore, they are liable to be set aside.

5. Secondly, this Court, in a batch of Writ Petitions in the case of Tvl.Tarur Creation vs. The Commercial Tax Officer, etc. passed in W.P.Nos.15077 of 2012, etc., had held that the Assessing Officer cannot be solely guided by the proposal given by the Enforcement Wing Officers and that the Assessing Officer has to independently consider the same, without being influenced by such proposals of the higher officials. Some of the decisions in which similar views have been taken are in the cases of Madras Granites (P) Ltd., Vs. Commercial Tax Officer and Another reported in 2006 (146) STC 642 (MAD) and Narasus Roller Flour Mills Vs. Commercial Tax Office, (Enforcement Wing), Sankagiri and another reported in 2015 (81) VST 560 (MAD).

6. Such a ratio laid down by this Court in all the above Writ Petitions stand good till date and in these background, the Commissioner of State Tax, Chennai, had issued Circular No.3 dated 18.01.2019, empowering the Assessing Authority to deviate from the proposals, without seeking for approval from the Enforcement Wing/ISIC Authorities. The relevant portion of the

Circular No.3 dated 18.01.2019 reads thus:-

> "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."

Thus, the Circular has empowered the Assessing Officers to henceforth independently deal with the assessment without being influenced by the proposals of the higher officials.

7. In view of Circular No.3 dated 18.01.2019 issued by the Commissioner of State Tax, Chennai, the impugned proceedings in all these Writ Petitions, which proceeds on the basis of the proposals/reports of the Enforcement Wing/ISIC, are liable to be set aside.

8. In view of the judicial decisions referred above, the impugned assessment proceedings, which culminated on the basis of the inspection conducted by the Enforcement Officers, as well as the VAT Audit and the alleged mismatch between the returns of the petitioner with the corresponding dealers, cannot be sustained. Accordingly, the impugned assessment proceedings are quashed and the matters are remanded back to the respondent herein for reconsideration. The assessment proceedings shall be re-done in the manner indicated in JKM Graphics Solutions case (supra), on issuance of a fresh show cause notice by the Assessing Officer and the Assessing Officer shall scrupulously follow the observations made in JKM Graphics Solutions case. The Assessees are granted liberty to file their objections with all supporting documents, within a period of 30 days from the date of receipt of a copy of this order. On receipt of such objections, the Assessing Officer shall extend due opportunity of personal hearing to the Assessees/Representatives, if necessary through Video Conferencing and endeavor to conclude the assessment proceedings independently and not being influenced by any of the reports or proposals of the Enforcement/ISIC Authorities. Such an exercise shall be completed atleast within a period of 12 weeks from the date of receipt of the objections. In case, if the objections are not received within the date of expiry of 30 days from the date of receipt of a copy of this order, the Assessing Officer shall

commence the assessment proceedings, after the expiry of the 30 days indicated above.

9. With the above observations and directions, all these Writ Petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

hvk

To

The Commercial Tax Officer,
Periamet Assessment Circle,
Chennai - 600006.

+1 cc to The Special Government Pleader(Taxes), Sr.No. 28637

W.P.Nos.7144 to 7147 of 2016
and
W.M.P.Nos.6348 to 6351 of 2016

PVS(CO)
RMP(28/10/2020)