IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.01.2020

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.33246 and 33248 of 2019
and WMP. Nos.33706, 33707, 33711 and 33713 of 2019

M/s.S.S.A.V. Sons
rep. By its Proprietor
Mr.V.Samuthirarajan

...Petitioner in both W.Ps

Vs

1. The Appellate Deputy Commissioner (CT),
Sub Jail Road, Commercial Taxes Building,
Cuddalore.

2. The Commercial Tax Officer,
Chidambaram II Assessment Circle,
Chidambaram.

.. Respondents in both W.Ps

Prayer: PETITIONs filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records of the first respondent in A.P.Nos.310/2015 & 311/2015 VAT dated 21.02.2019 and consequential orders of assessment passed by the second respondent in TIN:33124461686/2012-13 and 2013-14 dated 27.05.2015 respondents and further direct the respondents to follow the directions issued by this Court in the case of JKM Graphics Solutions P Ltd. Reported in 99 VST 343.

For Petitioner : Mr.V.Sundareswaran
For Respondents : Mr.ANR Jayapratap
Government Advocate

COMMON ORDER

The petitioner challenges an order of the first Appellate Authority passed in terms of the Tamil Nadu Value Added Tax Act, 2006 ('Act') in respect of the periods 2012-13 and 2013-14, dated 21.02.2019.

2. The issue on merits relates to certain modifications to turnover on the basis of the data collected from the website of the Commercial Taxes Department relating to other end dealers. The Assessing Officer has come to the conclusion on the basis of information culled from the selling dealers that the petitioner had indulged in sales suppression. The amounts were thus brought to tax adding gross profit and the element of freight.

3. An identical issue had arisen in the case of this very petitioner for the period 2011-12, wherein the first Appellate Authority, noticing the decision of the learned single Judge of this Court in the case of JKM Graphics Solutions P Ltd. V. Commercia1 Tax Officer (99 VST 343) had remanded the assessment to the file of the Assessing Authority to be redone after supplying the materials gathered to the assessee and after constitution of a proper internal mechanism within the Commercial Taxes Department to address such matters.

4. A divergent stand has been taken by the Appellate Authority for these two years though the decision of this Court in the case of JKM Graphics (supra) is applicable on all fours to the present assessments as well.

5. Thus and in the interests of consistency, the present impugned orders are set aside and the Assessing Authority is directed to take up the assessments of two periods, viz, 2012-13 and 2013-14 along with the assessment for 2011-12 and after issuance of notice to the petitioner and affording of opportunity of personal hearing, decide the issues in line with Circular No.3 of 2019 dated 18.01.2019 issued by the Special Commissioner.

6. The Writ Petitions are disposed in the above terms. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy//

Sub Assistant Registrar

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To

1. The Appellate Deputy Commissioner (CT),
   Sub Jail Road, Commercial Taxes Building,
   Cuddalore.

2. The Commercial Tax Officer,
   Chidambaram II Assessment Circle,
   Chidambaram.

+1cc to Mr.V.Sundareswaran, Advocate, SR.No.6763.
+1cc to Government Pleader(Taxes), SR.No.7737.

W.P. Nos.33246 and 33248 of 2019
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SPD(CO)
CSR: 17.03.2020