BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 11.03.2025

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**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**
**AND**
**THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

W.A(MD)Nos.163 & 164 of 2020
and
C.M.P.(MD)No.13347 of 202
&
C.M.P.(MD)Nos.1169 & 1172 of 2020

Tvl.Muthu Meenakshi Enterprises,
Represented by its partner,
M.Kathiravan, aged about 32 years,
S/o.K.Mohan,
No.37, East Marret Street,
Madurai-625 001. ... Appellant / Writ Petitioner in both W.As.

Vs.

1.The Commissioner of Commercial Taxes,
O/o The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepuak,
Chennai-600 005.

2.The Commercial Tax Officer,
Chitrakara Street Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai-625 020. ... Respondents / Respondents in both W.As.

**Prayer in W.A.(MD)No.163 of 2020:** Writ Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 18.06.2018 in W.P.(MD)No.20649 of 2016 and allow the said writ petition and pleased to call for the records of the second respondent relating the assessment order in TIN 33504921742/2012-13, dated 29.08.2016 and quash the same as illegal, arbitrary.

**Prayer in W.A.(MD)No.164 of 2020:** Writ Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 18.06.2018 in W.P.(MD)No.20651 of 2016 and allow the said writ petition and pleased to call for the records of the second respondent relating the assessment order in TIN 33504921742/2014-15, dated 29.08.2016 and quash the same as illegal, arbitrary.

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| For Appellant | : Mr.Hari Radhakrishnan |
| For Respondents (in both W.As) | : Mr.R.Suresh Kumar Additional Government Pleader |

**COMMON ORDER**

(Order of the Court was made by **G.R.SWAMINATHAN, J.)**

Heard both sides.

2. The petitioner is an assessee coming under the jurisdiction of the second respondent. The case on hand pertains to the assessment years 2012-13 & 2014-15. There was a raid on the appellant's business premises on 15.12.2014. Certain irregularities were noticed. There upon, the asssessing officer issued notice dated 30.06.2016 proposing to re-open the assessment and re-determine the tax payable and levy penalty. Since the assessing officer did not receive any response from the assessee, he proceeded to confirm the demand set out in the notice. The orders dated 29.08.2016 were issued to that effect. In fact, the notices and the assessment orders pertain to four assessment years. Challenging the same, the appellant filed W.P.(MD)No.20648 & 20651 of 2016. The learned single Judge vide order dated 18.06.2018 dismissed the writ petitions on the ground that the assessee must avail the alternative remedy of appeal. Challenging the said common order dated 18.06.2018, these writ appeals have been filed.

3. In fact, these writ appeals are in respect of only two assessment years mentioned above. In respect of the other two assessment years, the

assessee filed statutory appeal before the appellate authority in Appeal Nos.253 of 2018 & 254 of 2018. We are informed that these appeals were allowed in favour of the assessee and challenging the same, the department has filed the appeals before the Sales Tax Appellate Tribunal. (MTSA Nos.52 & 53 of 2024).

4. The learned counsel appearing for the appellant points out that one of the grounds for re-opening the assessment was "mismatch". But it is very obvious that the authority did not follow the procedure laid down in **W.P.(MD)No.1050 of 2016 etc., batch** ***(JKM Graphics Solution Private Limited Vs. The Commercial Tax Officer, Vepery Assessment Circle, Chennai)***. A learned Judge of this Court vide order dated 13.02.2023 had held in the said case that whenever the authority proposes to re-open the assessment on the ground of mismatch, certain procedures will have to be adopted. Relevant paragraphs are as follows:-

> "56. ... 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.

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 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.

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."

In fact, pursuant to the direction given by the learned single Judge, the Commissioner of Commercial Tax also issued circular dated 24.02.2021. In the case on hand, the orders were passed before the circular was issued but after the ***JKM Graphics Solution*** case was pronounced. It is also not in dispute that ***JKM Graphics Solution*** judgment given by the learned single Judge was confirmed by the Hon'ble Division Bench also. Since the impugned orders are in breach of the procedure set out in ***JKM Graphics Solution*** case, we have to necessarily interfere. But then, the tax component arising out of the mismatch issue constitutes only a small part of the overall demand.

5. When this was pointed out to the learned counsel for the appellant, the learned counsel for the appellant submitted that immediately after the enforcement officials conducted raid and pointed

out certain defects, he submitted a detailed representation on 28.04.2015 itself giving his explanation to the Joint Commissioner (Enforcement), Madurai. According to the learned counsel for the appellant, this was very much a part of the file. If that be the case, the assessing officer ought to have taken the same into account. There is also considerable merit in the contention of the appellant's counsel that the assessing officer could not have mechanically endorsed the stand taken by the enforcement officials. In fact, there should be an independent application of mind on the part of the assessing officer. In this case, the assessing officer had mechanically confirmed the demand set out in the notice merely because there was no reply from the assessee.

6. The learned counsel for the appellant on instructions states that the assessee will pay 15% of the tax demand. It appears that some substantial payments had already been made. It is for the assessing officer to verify and give due credit to the same. We set aside the impugned orders and remand the matter to the file of the second respondent for fresh disposal on condition that the appellant, without prejudice to his contention, deposits 15% of the tax demand within a

period of 4 weeks from the date of receipt of the copy of this order. Of-course, the amount already paid in this regard by the appellant will be duly given credit and adjusted. We have taken an indulgent approach only because we notice that in respect of two of the assessment years, the appeals filed by the appellant had already been allowed by the appellate authority. However, we make it clear that we have not gone into the merits of the matter. The contentions of both the parties are left open. The writ appeals are allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

**(G.R.S., J.)** **(M.J.R., J.)**
**11.03.2025**

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
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**G.R.SWAMINATHAN, J.**

**AND**
**M.JOTHIRAMAN, J.**

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To

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