(2017) 03 MAD CK 0039

In the Madras High Court

Case No : 7177 of 2017 and W M P No 7801 of 2017

M/s.A.S.P. Traders rep. by its Proprietor, P.Asaithambi — APPELLANT

Vs

The Commercial Tax Officer, Mannargudi Assessment Circle — RESPONDENT

Date of Decision : 27-03-2017

Acts Referred:

Citation : (2017) 03 MAD CK 0039

Hon'ble Judges : Ravichandrabaabu

Bench : SINGLE BENCH

Advocate : Ravichandrabaabu

Final Decision : Allowed

Judgement

1. Mr.S.Kanmani Annamalai, learned Additional Government Pleader takes notice for the respondent and by consent of the parties, the main writ

petition itself is taken up for final disposal, as the issue involved in this case is covered by the decision of this Court in a batch of cases made in

W.P.No.105 of 2016 etc., dated 01.03.2017, in favour of the petitioner.

2. The petitioner is aggrieved against the order of assessment dated 11.01.2017 issued by the respondent, based on the details obtained from the

Web Report.

3. Learned counsels appearing on both sides submitted that the issue involved in this case is squarely covered by the above decision of this Court

wherein the learned Judge has considered the assessment passed based on the Web reports and consequently, found that the authorities in such

cases have to evaluate a centralized mechanism exclusively to deal with the cases of mismatch. In the above said decision, the learned Judge has

observed at paragraph Nos.56 to 58 as follows:

56.The procedure adopted under the Maharastra 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 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 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/setoff 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. The Court places on

record the valuable assistance of Ms.R.Charulatha Advocate of M/s. Lakshmikumaran and Sridharan Attorneys. consequently,

connected miscellaneous petitions are closed. No costs.

4. Since both sides have admitted that the above decision is squarely applicable to the present case as well, this writ petition is allowed and the

impugned order of assessment is set aside and the matter is remitted back to the Assessing Authority, namely, the respondent for considering the

matter afresh and pass fresh order of assessment after following the guidelines/ directions issued in the above said decision of this Court. The

respondent shall also give personal hearing to the petitioner before finalising the order of assessment. The entire exercise shall be completed by the

respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous

petition is closed.

