**(2017) 03 MAD CK 0052**

**In the Madras High Court**

**Case No :** 6087 of 2017 and WMP No 6519 of 2017

M/s.Selvam Electronics, Rep. By its Proprietor — APPELLANT

Vs

Commercial Tax Officer, Cuddalore Taluk Assessment Circle — RESPONDENT

**Date of Decision :** 23-03-2017

**Acts Referred:**

**Citation :** (2017) 03 MAD CK 0052

**Hon'ble Judges :** K.Ravichandrabaabu

**Bench :** SINGLE BENCH

**Advocate :** K.Ravichandrabaabu

## Judgement

1. The petitioner is aggrieved against the order of assessment dated 31.10.2016.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent.

3. The petitioner is a registered dealer under the Tamilnadu Value Added Tax Act, 2006. Originally, an order of assessment was made for the

Assessment Year 2012-2013 and the petitioner challenged such assessment before the appellate authority. Upon hearing the parties, the appellate

authority remanded the matter back to the respondent herein to pass fresh orders after verification of accounts and after providing an opportunity

of personal hearing to the petitioner. Consequently, the respondent issued a notice on 03.10.2016, calling upon the petitioner to file the objections

within 15 days of receipt of such notice and also to appear for personal hearing on 14.10.2016. The petitioner claims that the very notice dated

03.10.2016, was served on the petitioner only on 15.10.2016 and therefore, they were not in a position to appear for the personal hearing on

14.10.2016. However, the respondent passed the impugned order of assessment on 31.10.2016, stating that the petitioner did not file any

objections and also not attended the personal hearing on the date fixed.

4. When the matter was taken up on 13.03.2017, the learned Government Advocate appearing for the respondent was directed to get instruction

as to when the notice dated 03.10.2016 was served on the petitioner. Today, when the matter is taken up for hearing again, the learned

Government Advocate produced the file. Perusal of the file would show that the notice dated 03.10.2016 was served on the petitioner only on

15.10.2016. The acknowledgement made available in the file clearly shows that the petitioner received notice only on 15.10.2016. When that

being the factual position, I do not think that the respondent is justified in concluding that the petitioner has not filed their objections and attended

the personal hearing, inspite of receipt of the notice dated 03.10.2016. Therefore, it is evident that the principles of natural justice is violated in this

case. On that ground, the order of assessment has to be set aside and the matter needs to be remitted back to the respondent for passing fresh

order after hearing the petitioner.

5. Learned counsel appearing for the petitioner further pointed out that since the whole assessment is based on web report, the respondent has to

follow the guidelines/directions issued by this court in a batch of cases made in W.P.No.105 of 2016 dated 01.03.2017, wherein this court, while

dealing with similar issue, has directed the authority to evolve a centralised mechanism to deal with the cases of mismatch. Paragraph Nos.56 to 58

of the said order reads 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/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. 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.

6. Therefore, the respondent, while passing the fresh order, should also follow the guidelines/directions issued by this court in the above said batch

of cases. Accordingly, this writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the respondent

for issuing a fresh order of assessment, after giving due opportunity of hearing to the petitioner and considering their objections. The whole 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. The connected

miscellaneous petition is closed.

 