IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.36042 of 2016 &
W.M.P.No.30942 of 2016

Tvl.Lakshmi Metal Works
rep. by its Sole Proprietor
Mr.K.Nataraj .. Petitioner

-Vs-

The Commercial Tax Officer
Commercial Taxes Department
Ganapathy Assessment Circle
Dr.Balasundaram Road
Coimbatore 18. .. Respondent

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN/33332203459/2008-09 and quash the assessment order dated 30.06.2015 passed therein and further direct the respondent to pass fresh order, after giving time for filing objecitons and also providing personal hearing to the petitioner.

For Petitioner : Mr.S.Sivakumar

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.S.Sivakumar, learned Counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate, who has accepted notice on behalf of the respondent. With the consent of the learned counsel appearing on either side, the Writ Petition itself is taken up for disposal.

2.The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act] and they are dealer in Pumps, Iron and Steel Castings. In this Writ Petition, they have challenged the order dated 30.06.2015, in and by which the respondent has assessed the petitioner to higher rate of tax, under section 22 (4) of the TNVAT Act.

3.On a perusal of the impugned order, it is evidently clear that the respondent has failed to follow the mandatory procedure as laid down under the proviso to section 22(4) of the TNVAT Act, as no pre-assessment notice has been issued. Further, the petitioner should have been afforded an opportunity of personal hearing to putforth their objections. However, straight away the respondent has passed the impugned order, solely on the ground that the petitioner has not produced original sale invoices pursuant to the summons in Form PP.

4.Mere non-production of the original invoices pursuant to the summons cannot automatically lead to an assessment. The Assessing Officer would be empowered to issue a show cause notice on account of non-production of the concerned invoices and thereafter, proceed in accordance with law. However, in the instant case, the respondent has straight away issued the impugned order, which is not sustainable in the eye of law.

5.Accordingly, the Writ Petition is allowed, the impugned order is quashed, with liberty to the respondent to proceed afresh in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

RPA

To

The Commercial Tax Officer
Commercial Taxes Department
Ganapathy Assessment Circle
Dr.Balasundaram Road
Coimbatore 18.

1 cc to Mr.S.Sivakumar, Advocate, Sr. 59504
1 cc to Spl. G;P (T), Sr. 59574

W.P.No. 36042 of 2016

KJI (CO)
kk 25/10