IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.12.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.No.41994/2016 & WMP.No.35939/2016

Tvl.Reliance Auto Centre
rep.by its Proprietor A.Saravanan
No.12, Bharathi Road, Cuddalore 607001. .. Petitioner

Vs

The Commercial Tax Officer
Cuddalore Town Assessment Circle
Cuddalore. .. Respondent

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records on the file of the respondent in VAT/33864381545/2015-16 dated 31.10.2016 and quash the same as illegal, invalid and against the principles of natural justice.

For Petitioner : Mr.A.Chandrasekaran
For Respondent : Mr.K.Venkatesh, GA

ORDER

Heard Mr.A.Chandrasekaran, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing on behalf of the respondents and with the consent on either side, the writ petition is taken up for final 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 as well as under the Tamil Nadu General Sales Tax Act, 1959. The challenge in this writ petition is to the order of assessment dated 31.10.2016 for the Assessment Year 2015-2016.

3 The only ground on which the impugned order is by contending that the petitioner has not been afforded an opportunity of personal hearing which is mandatory while completing the assessment under section 22[4] of TNVAT Act. To examine the correctness of the said contention, learned Government Advocate was directed to get instructions in the

matter. The learned Government Advocate accordingly, has got copies of the show cause notices to show that an opportunity of personal hearing was afforded and the petitioner was directed to appear within ten days from the date of receipt of the notice, on any working days from 11.00 a.m. to 4.00 p.m., with documentary evidence. Normally the date of personal hearing will be fixed after the objections received by the Assessing Officer. This is so because at times, the Assessing Officer may be convinced with the reply and may drop the proposal and in such circumstances, the necessity to afford personal hearing will not arise. But, however, when the respondent is exercising the powers u/s.22[4], statute mandates personal hearing to be afforded.

4 In the light of the above, it is held that the impugned order has been passed contrary to the statutory provisions resulting in violation of principles of natural justice. It is seen that in the impugned order, the respondent has referred to certain decisions of the Tribunal and the petitioner did not have an opportunity to controvert the same nor raised any contentions as regards it applicability to the facts of their case. Therefore, in stead of setting aside the impugned proceedings, the petitioner is directed to treat the impugned proceedings as a second show cause notice and file their further objections within a period of two weeks from the date of receipt of a copy of this order, after which, the respondent shall afford an opportunity of personal hearing and pass a speaking order on merits and in accordance with law.

5 Since this Court has directed the impugned order to be treated as a show cause notice, the question of demanding tax or penalty, as quantified, does not arise and it shall abide by fresh orders to be passed by the respondent in terms of the above directions.

6 The writ petitions stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

To
The Commercial Tax Officer
Cuddalore Town Assessment Circle
Cuddalore.

+1 cc to Mr.A.Chandrasekaran, Advocate SR.NO. 71807

+2 cc to Special Govt. Pleader, High Court, Madras SR.NO. 71613 & 71998

WP.No.41994/2016

MMP 28.12.2016