BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.11.2016
CORAM:
THE HON'BLE DR.JUSTICE S.VIMALA

W.P(MD) No.21042 of 2016
and WMP(MD)No.15041 of 2016

M/s.OmCherma Chemicals,
Rep. by its Propritrix
Mrs.L.Vijaya Lakshmi ... Petitioner

-vs-

1.The Commissioner of Commercial Taxes,
The Commercial Taxes Department,
2nd Floor, Ezhilagam, Chepauk,
Chennai – 600 005.
2.The Commercial Tax Officer (Main),
Sattur, Virudhunagar District ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus calling for the records relating to the order of the 2nd respondent in his proceedings in TIN No.33355782748/2015-16, dated 19.09.2016 and quash the same and to direct the 2nd respondent to afford an opportunity of personal hearing and pass fresh order for the assessment year 2015-2016 under the TN VAT Act.

For Petitioner	:	Mr.M.Md.Ibrahim Ali
For Respondents	:	Mr.R.Karthikeyan Additional Government Pleader

O R D E R

This writ of certiorarified mandamus has been filed challenging the order, dated 19.09.2016, under which, total taxable amount has been determined and the petitioner has been called upon to pay tax of Rs.5,42,649/-.

2.The learned counsel for the petitioner would submit that the authorised representative, who received the notice, left the service without the knowledge of the petitioner, who has missed the opportunity of personal hearing and therefore, fresh opportunity is to be given. In support of his contention, he has relied upon a Division Bench Judgment of this Court made in W.A.(MD)No.1323 of 2016, dated 29.09.2016, under which, in a similar set of circumstances, fresh opportunity has been given and the person, who is similarly placed, was also given a fresh opportunity.

3. The learned counsel for the respondents would insist upon atleast 10% of the tax demanded to be paid, as a condition precedent for the matter being remanded.

4. When the original assessment itself is under challenge, the payment of 10% tax demanded, can be ordered only subject to the final assessment to be made by the assessing authority / appellate

authority. Hence, subject to the condition that, payment of 10% of the tax demanded shall be subject to the result of the final decision to be taken. The petitioner is directed to make 10% of the tax demanded within a period of three weeks from the date of receipt of a copy of this order. On such payment is being made, the matter shall stand remanded and the assessing authority is directed to give sufficient opportunity of hearing to the petitioner, including personal hearing and also to take a decision in accordance with law.

5.The writ petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/True Copy/

To

Sub Assistant Registrar

1.The Commissioner of Commercial Taxes,
The Commercial Taxes Department,
2nd Floor, Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Commercial Tax Officer (Main),
Sattur, Virudhunagar District.

+1cc to Mr.Mohamed Ibrahim Ali,Advocate,SR No 66063
+1cc Special Government Pleader,SR No.66640

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MS/MR/15.2.2017/2P.5C