BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **22.11.2016**

CORAM:

THE HONOURABLE DR.JUSTICE **S.VIMALA**

W.P(MD)No.21987 of 2016
and
W.M.P(MD)No.15717 of 2016

Tvl.Valaraja Hardware rep. by its
Proprietor R.Pounraj,
S/o V.M.Ramachandra Nadar, : Petitioner

Vs.

The Commercial Tax Officer,
Commercial Tax Department,
Tenkasi, Tirunelveli District. : Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records pertaining to the impugned order passed by the respondent herein in TIN:33515681489/2014-15, dated 10.08.2015 and quash the same.

For Petitioner : Mr.S.Prasanth

For Respondent : Mr.R.Karthikeyan,
Additional Government Pleader.

<u>O R D E R</u>

This is a writ petition challenging the imposition of tax on the ground that opportunity of personal hearing is not given to the petitioner.

2.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader, who took notice for the respondent. By consent, the writ petition itself is taken up for final disposal.

3.0.The facts leading to the filing of this writ petition are as follows:

The petitioner is carrying on the business of trading in Hardwares. He is regularly filing return and paying the tax properly.

3.1.On 10.12.2014, the Enforcement Wing Department inspected the petitioner's firm and found that there was a sales suppression. Based on the report of the Enforcement Wing Department, the respondent has issued one revision notice on 24.06.2015. Thereafter, the respondent has passed the impugned order dated 10.08.2015, demanding tax and penalty, based on the report of the Enforcement Wing Department. The assessment was made without affording an opportunity of personal hearing to the petitioner. Due to medical reasons, the petitioner was not able to file reply to the notice and to challenge the present impugned order in time. Therefore, this writ petition has been filed.

4.The impugned order is assailed on two grounds:

(i)Opportunity of personal hearing is not given;

(ii)The Commercial Tax Department, while passing the order imposing tax, did not give any calculation/reason as to how the quantum of tax was arrived at.

5.The learned counsel appearing for the petitioner relies upon the decision of the Principal Bench of this Court in W.P.Nos.3084 to 3092 of 2016, dated 27.01.2016, where-under, quoting the observation of the Judgment reported in AIR 2003 SC 4664 that 'reason is the heartbeat of every conclusion, without the same, it becomes lifeless and therefore it cannot be sustained', it has been held as follows:

> “For the foregoing reasons, the impugned orders in all the writ petitions are set aside. The matters are remanded back to the respondent for fresh consideration. The petitioner is permitted to produce all the documents including the purchase bills, books of accounts and particulars of the vehicles relied upon by them with additional objections, if any within three weeks from the date of receipt of the copy of the order. Upon receipt of the same, the respondent shall fix a date for personal hearing on which date the petitioner shall appear and thereafter, the respondent shall consider the objections and all the documents including the forms submitted by the petitioner and pass orders within four weeks without being influenced by the report of the enforcement wing officials. While passing orders, the respondent shall also consider the claim of refund of the petitioner”.

6.It is not the case of the respondent that opportunity of personal hearing was given. But it is not as if the petitioner was completely correct, as after receiving notice from the respondent, he also did not appear.

7.Considering the facts and circumstances of the case, subject to payment of 10% of the tax demanded within a period of four weeks from the date of receipt of a copy of this order, the impugned order dated 10.08.2015 passed by the respondent would stand set aside and the matter would stand remitted back to the respondent and the respondent after affording an opportunity of personal hearing to the petitioner, shall pass a reasoned order. In case, if the petitioner fails to pay 10% of the tax demanded within the period stipulated by this Court, this writ petition shall stand dismissed without any reference to this Court and the order of the respondent will get automatically restored.

8.This Writ Petition stands allowed to the extent indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Deputy Registrar

/True Copy/

Sub Assistant Registrar

smn

To

The Commercial Tax Officer,
Commercial Tax Department,
Tenkasi, Tirunelveli District.

+1cc to Mr.S.Prasanth, Advocate Sr.No. 71917

+1cc to Spl.Government Pleader Sr.No. 71656

JAM/10.01.2017/KM /3p-4c

ORDER MADE IN
W.P(MD)No.21987 of 2016
and
W.M.P(MD)No.15717 of 2016
22.11.2016