IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2017

CORAM

THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**

W.P.No.5515 of 2017 and
WMP.No.5862 of 2017

M/s.Malladi Drugs and Pharmaceuticals Limited,
Represented by its General Manager - Accounts
V.Krishnakumar
No.9, GST Road, St.Thomas Mount,
Chennai - 600 016. ...Petitioner

Vs

Assistant Commissioner - CT,
Nandambakkam Assessment Circle,
No.17, Second Street, Loganathan Nagar,
Choolaimedu, Chennai - 600 094. ...Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent and quash the assessment order in VAT/33500902741/2015-16 dated 04.01.2017 passed by the respondent as illegal and arbitrary and direct the respondent to pass fresh orders by providing an opportunity of personal hearing to the petitioner and consider removal of erroneous tax claims.

For Petitioner : Mr.Joseph Prabakar
for Mr.G.Vijayakumar

For Respondents : Mr.K.Venkatesh, Government Advocate

O R D E R

Heard Mr.Jospeh Prabakar for Mr.G.Vijayakumar, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent. With the consent of the learned counsel on either side, the writ petition itself is taken up for final disposal.

2. The petitioner is before this Court challenging the order passed by the respondent dated 04.01.2017, which is an order of assessment under the provisions of Central Sales Act, 1956. Notices were issued to the petitioner by the respondent on 22.11.2016, 22.12.2016 and 29.12.2016. Pre-revision notices proposing to revise the petitioner's taxable turn over were issued on the alleged ground that there is a mismatch on cross verification of Annexure I of the petitioner with that of Annexure II of their selling dealers.

3. The petitioner submitted their objections, in which, they requested to furnish details relating to mismatch so as to enable them to submit an effective reply. Further, they pointed out that there cannot be a

proposal to levy penalty or interest, as there is nothing specifically brought on record to show that the petitioner had wilfully suppressed transactions. The respondent, on receipt of the objections ought to have furnished the details or directed the petitioner to come over to his office and take copies of the details. Unfortunately, the Assessing Officer solely guided by the report of the Enforcement Wing Officer completed the assessment saying that before the Enforcement Wing, the petitioner has accepted the charges and the objection given by the petitioner was an after thought.

4. The Courts have repeatedly held that Assessing Officer is an independent authority, who has to complete assessment based on the objection given to the proposal made in the notice by the Assessing Officer. Therefore, any statement given by the employee before the Enforcement Officer cannot be treated as an estoppel against the dealer, while submitting objections. In fact, as to how cases of mismatch have to be dealt with was considered by this Court in **2017 99 VST 343 Madras [J.K.M.Graphics Solutions Pvt. Ltd., Vs. Commercial Tax Officer Vepery Assessment Circle, Chennai**, and enumerated certain guidelines to be followed by the Assessing Officer, in case, where revision of assessment is proposed based on mismatch culled out from the official

website of the Commercial Tax Department.

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(svki)

5. In view of the above reasons, the impugned order requires interference. Accordingly, the writ petition is allowed and the impugned order is set aside. The respondent is directed to furnish details as sought for by the petitioner. The petitioner is given 15 days' time to submit their objections and on receipt of which, the respondent shall afford opportunity of personal hearing to the petitioner and re-do the assessment on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

24.07.2017

To

Assistant Commissioner - CT,
Nandambakkam Assessment Circle,
No.17, Second Street, Loganathan Nagar,
Choolaimedu, Chennai - 600 094.

<u>W.P.No.5515 of 2017</u>