IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.6691 and 6692 of 2017
And
W.M.P.Nos.7218 and 7219 of 2017

Tvl.Ambaji Automobiles,
Represented by its Prop.
J.Masararam

..Petitioner in both the W.Ps.

Vs.

1.The State of Tamil Nadu
Represented by its Secretary to
Government Department of Commercial
Taxes and Registration
Fort St. George, Beach Road,
Chennai – 600 009.

2.The Commissioner of Commercial Taxes,
2nd Floor, Elilagam,
Chepauk, Chennai – 600 005.

3.The Commercial Tax Officer
Enforcement Wing,
Group III, Vellore.

4.Assistant Commissioner (C.T),
Ranipet Assessment Circle,
Vellore District.

..Respondents in both the W.Ps.

Common Prayer:

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the Assessment order passed by the 4th respondent Assessment order in his proceedings TIN No.33744282477/2014-15 and TIN No.33744282477/2015-16 respectively, dated 14-02-2017 received by the petitioner on 02.03.2017 and quash the same and to direct the 4th Respondent to pass fresh orders after the verification of the accounts of the petitioner and after affording an opportunity of personal hearing.

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For Petitioner : Mr.A.S.Mujibur Rahman
For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader (Taxes)

C O M M O N   O R D E R

Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes) takes notice for the respondents and by consent of parties the main writ petition itself is taken up for final disposal, at the admission stage, since the issue involved in this case is lying in a narrow campus.

2.The petitioner is aggrieved against the order of assessment / revision under Section 27 of the Tamil Nadu Value Added Tax Act, 2006.

3.Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Taxes) appearing for the respondents.

4.The petitioner is the registered dealer under the Tamil Nadu Value Added Tax Act, 2006. On 01.03.2016 and 02.03.2016, the Enforcement Wing Officers have conducted surprise inspection in the place of business of the petitioner and found certain defects relating to the assessment year 2014-15. Consequently, notice was issued on 19.07.2016 calling upon the petitioner to file their objection against the proposal of tax and penalty. The petitioner filed their objection. They also specifically sought for a personal hearing through their objection dated 28.11.2016. Thereafter, the impugned order of assessment came to be passed on 14.02.2017.

5.The learned counsel for the petitioner pointed out that the Assessing Officer has not considered any of the objections raised by the petitioner in the above objection and simply over ruled the same, without application of mind. He further submitted that personal hearing, as specifically sought for, was not given to the petitioner. Therefore he contended that the impugned order of the assessment suffers not only on the ground of violation of principles of natural justice but also on the ground that it is an outcome of non application of mind.

6.The learned Additional Government Pleader (Taxes) appearing for the respondents though sought to contend that the order of assessment was passed after considering the objections raised by the petitioner, he is fair enough to admit that there is no discussion of the objections in detail.

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7.I have perused the order of assessment impugned in the writ petition. The Assessing Officer, after extracting the detailed objections made by the petitioner, has concluded by a single line observation that the objections filed by the petitioner are not fit to the notice issued and therefore, they are over ruled. Certainly there is no discussion whatsoever with regard to the objections made exhibiting the independent application of mind by the Assessing Officer.

8.Needless to say, that the Assessing Officer has to set out reasons and findings for arriving at such conclusion, after analysing the objections made by the dealer. In this case, it has not been done. Therefore, it is evident that the Assessing Officer has not applied his mind to the objections made by the dealer. Apart from the said fact, it is also evident that the assessee was not given an opportunity of personal hearing, even though it was sought for in their objection. Thus, it can be concluded that the order of assessment has not satisfied the principles of natural justice in its full sense and therefore, on that ground also, it requires interference. Accordingly, the writ petitions are allowed and the impugned orders of assessment are set aside. Consequently, the matter is remitted back to the Assessing Authority for passing a fresh order of assessment after considering the objections raised by the petitioner in detail and also by giving an opportunity of personal hearing. Such exercise shall be done by the fourth respondent within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that this Court is not expressing any view on the merits of the claim made by the petitioner, as it is for the fourth respondent to consider and decide.

9.The writ petitions are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

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To

1.The State of Tamil Nadu
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2.The Commissioner of Commercial Taxes,
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3.The Commercial Tax Officer Enforcement Wing,
Group III, Vellore.

4.The Assistant Commissioner (C.T),
Ranipet Assessment Circle,
Vellore District.

+1cc to Mr.M.M.D. Ibrahim Ali, Advocate, S.R.No.17213
+1cc to the Special Government Pleader, S.R.No.17274

NR(CO)
EU 3.4.17

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