IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2017

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

Writ Petition No.38672 of 2006

&

M.P.No.1 of 2006

M/s.Rahmath Steels
No.69, Sembudoss Street
Chennai-I
Rep. by Proprietrix
Mrs.Jannathul Arifa ... Petitioner

vs

The Deputy Commercial Tax Officer
Harbour-III Assessment Circle
Chennai-I ... Respondent

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the respondent in TNGST 0040271/2002-03, quash the order dated 30.12.2005 with a direction to the respondent to afford an opportunity to the petitioner by forwarding copies of such third party documents which are the material source for addition and an opportunity of cross examination of such third party before passing final orders.

For Petitioner : Mr.S.Ravee Kumar

For Respondent : Mrs.Narmadha Sampath
Special Government Pleader

O R D E R

Heard Mr.S.Ravee Kumar, learned counsel for the petitioner and Mrs.Narmadha Sampath, learned Special Government Pleader for the respondent.

2. The petitioner has filed this writ petition challenging the revision of assessment made by the respondent under the Tamil Nadu General Sales Tax Act, for the Assessment Year 2002-03. The petitioner is partially to be blamed for inviting the impugned order since the petitioner did not respond to the revision notice dated 09.03.2004 and did not file objections.

3. Be that as it may, the issue involved in this writ petition is whether the petitioner had reasonable opportunity to put forth their objections. The reassessment proceedings is based upon the statement recorded from Mahendra Kumar Jain, husband of Mrs.Madhubala, Proprietrix of M/s.Aashana Enterprises. On a perusal of the impugned order, it is evident that the reassessment itself is based upon the sworn statement recorded from the above said Mahendra Kumar Jain. It is a settled principle of law that if a statement is recorded behind the back of a dealer, copies of such statements should be furnished to the dealer giving sufficient opportunity to the dealer to cross-examine those persons, who had given those statements. Such view was taken by this Court in Sri Kumaran Trading Company, Chennai v. The Deputy Commercial Tax Officer, Manali Assessment Circle, Chennai in W.P.No.14851 of 2005 dated 03.10.2016 and in M/s.Ruchi Metals Vs. The Commercial Tax Officer, Mooremarket South Assessment Circle, Chennai in W.P.No.27902 of 2005 dated 05.09.2017.

4. Thus, in the absence of such opportunity being afforded to the petitioner in the instant case, it has to be held that the impugned proceedings are in violation of principles of natural justice. This is a fit case to remand the matter to the respondent to redo the assessment in accordance with law.

In the result, this writ petition is allowed and the impugned order dated 30.12.2005 is set aside with a direction to the respondent to furnish the statement recorded from the third party and provide further opportunity to the petitioner to submit their objections and make the above said third party available for being cross-examined and proceed to complete the assessment in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

Gpa

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Deputy Commercial Tax Officer
Harbour-III Assessment Circle
Chennai-I

W.P No.38672 of 2006 &
M.P.No.1 of 2006

GJII(CO)
RVR 14/11/2017