IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2018

CORAM:

THE HON'BLE Mr. JUSTICE T.S.SIVAGNANAM

Writ Petition No.13585 of 2018
and W.M.P.No.16014 of 2018

M/s. Lakshmi Motors,
Represented by its Partner, Mr. D.Srinivasan,
No.14 Trunk Road, Karayanchavadi,
Poonamallee, Chennai 600 056 ... Petitioner

..vs..

The Assistant Commissioner (ST),
Choolai Assessment Circle,
No.10 Greams Road, II Floor,
CT Building, Chennai 600 006 ... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the impugned proceedings of the respondent in TIN No.33630501720/2015-2016 dated 19.1.2018 and quash the same as passed contrary to the provisions of the TNVAT Act and without granting reasonable opportunity to the petitioner and so against the principles of natural justice.

For Petitioner : Ms. P.Aruna Devi
For Respondent : Ms. G.Dhanamadhri,
Govt. Advocate

O R D E R

Heard Ms.P.Aruna Devi, learned counsel appearing for the petitioner and Mrs.G.Dhana Madhri, learned Government Advocate (Taxes), who accepts notice on behalf of the respondent. With consent of the learned counsel appearing for both sides, the writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short "the Act"). In this writ petition, the petitioner has challenged the order of assessment, dated

19.01.2018, as contrary to the provisions of the Act and in violation of the principles of natural justice.

3. The learned counsel appearing for the petitioner submitted that the Input Tax Credit availed by the petitioner could not have been reversed on the ground that the selling dealer has not filed returns and paid tax. In support of the said contention, reliance was placed on the decision of this Court in the case of Infiniti Wholesale Limited v. Assistant Commissioner (CT), Koyambedy Assessment Circle, Koyambedu, Chennai, reported in (2015) 82 VST 457 (Mad.).

4. The learned Government Advocate (Taxes) appearing on behalf of the respondent pointed out that though the revision notices dated 06.11.2017 and 22.11.2017 were served on the dealer, they have failed to submitted their objections nor availed the opportunity of personal hearing granted to them. Therefore, it is submitted that the petitioner, if aggrieved, can only avail the remedy available under the Act.

5. After elaborately hearing the learned counsel appearing for both sides and after perusing the materials available on record, I am of the view that since the petitioner has placed reliance on the decision of this Court, in the case of Infiniti Wholesale Limited, cited supra, which decision has been confirmed by the Hon'ble Division Bench of this Court, in the decision reported in (2017) 99 VST 341 (Mad.) (Assistant Commissioner (CT), Presently Thiruverkadu Assessment Circle, Kolathur, Chennai v. Infiniti Wholesale Limited), this is a fit case where one more opportunity can be granted to the petitioner. However, such opportunity shall be subject to certain conditions.

6. Accordingly, the writ petition stands disposed of, by directing the petitioner to pay 15% of the disputed tax within a period of three weeks from the date of receipt of a copy of this order. If the petitioner complies with the said condition within the time stipulated, then the petitioner is entitled to treat the impugned assessment order as show cause notice and submit its objections within a period of ten days, thereafter. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law. In case, if the petitioner fails to comply with the condition imposed in this order within the time prescribed, the benefit of this order will not enure to the petitioner and the writ petition would stand automatically

dismissed without any further reference to this Court. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

srk

To

The Assistant Commissioner (ST),
Choolai Assessment Circle,
No.10 Greams Road, II Floor,
CT Building, Chennai 600 006

+1cc to Mr.P.Rajkumar, Advocate, S.R.No.35151
+1cc to the Government Pleader, S.R.No.35965

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cs/13/06/18