IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2018

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No No.40875 of 2016 &

Venkateswara Automobiles and Oil Stores
Represented by its Proprietor
S.Shanmugam
No.20/12 L.F. Road
Kachirayapalayam
Vadakannandal
Villupuram District

.. Petitioner

v.

The Commercial Tax Officer (Additional)
Kallakurichi

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the files of the respondent herein in TIN: 33684782448/2014-15, dated 26.09.2016 and quash the same.

For Petitioner : Mr.K.Narayanan for Mr.N.Prasad

For Respondent : M.Hariharan Addl. Govt. Pleader

ORDER

Heard Mr.K.Narayanan, learned counsel appearing for the petitioner and M.Hariharan learned Additional Government Pleader, appearing for the respondent.

2. The petitioner has filed this writ petition challenging the assessment order dated 26.09.2016 under the provisions of the Tamil Nadu Value Added Tax Act, 2006, for the assessment year 2014-15.

3. The primary ground on which the impugned order has been challenged is on the ground of violation of principles of natural justice. From the available records, it is seen that the respondent issued personal hearing notice dated 02.09.2016 fixing the date of personal hearing on 20.09.2016. In the said personal hearing notice, the respondent has referred to the revision notice dated

28.12.2015, personal hearing notice dated 18.01.2016 and the reply made by the petitioner dated 24.02.2016. However, by passing the impugned assessment order, the respondent has stated that the petitioner has not filed any reply to the notice dated 28.12.2015. Therefore, this is a factual error. The petitioner appears to have filed the bill war details on the date when they attended the personal hearing. On receipt of those details, the petitioner sent a representation dated 17.09.2016 by Speed Post, which was received in the office of the respondent on 19.09.2016 as could be seen from the tracking information furnished by the Postal Department. In the said representation, the petitioner after explaining the transaction requested for further details with regard to alleged excess turnover. Though this representation was very much available in the files of the respondent as on 19.09.2016, the respondent has passed the impugned order on 26.09.2016 on the ground that the petitioner has not filed any objections before him. Thus, it is clear that the respondent has not considered the objections/request made by the petitioner.

4. In the counter affidavit, in paragraph-6, the respondent would state that the petitioner is dragging on the matter asking details after details.

5. In my considered view if the turnover is proposed to be revised based upon the information secured from the official website of the department and an allegation is made against the dealer that certain transactions have not been accounted, for this, the dealer should be given an effective opportunity to put-forth their objections for which, details are required by the petitioner to be issued. This court had an occasion to consider as to how "mismatch" issue has to be dealt with and laid down certain guidelines in the form of instructions to the Assessing Officers, since there was no circular or instruction in the Commercial Tax Department. The said decision being in the case of JKM Graphics Solutions Private Limited Vs. CTO, Vepery Assessment Circle [reported in (2017) 99 VST 343]

6. Considering the above facts, this court is of the view that one more opportunity should be granted to the petitioner and the details sought for by the petitioner should be furnished so that they can submit their defence in an effective manner.

7. In the light of the above, the writ petition is allowed, impugned order is set aside and the matter is remanded to the respondent for fresh consideration. The respondent shall issue notice of personal hearing, hear the authorised representative of the petitioner and ask the petitioner to give a list of particulars they require and the particulars sought for, if the petitioner is legally entitled to the same, shall be furnished and

sufficient time should be granted to the petitioner to submit their objections and on receipt of the objections, the respondent shall take note of the directions issued in the order passed by this court in JKM Graphics Solutions Private Limited (supra) and redo the assessment in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Rj

To

The Commercial Tax Officer (Additional)
Kallakurichi

+1cc to Mr.N.Inbarajan, Advocate sr.no.38861
+1cc to The Special Government Pleader(Taxes) sr.no.39074

W.P.No.40875 of 2016 &
W.M.P.No.34876 of 2016

ss(co)
nr 03/07/2018