BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.07.2018

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THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD) No.13586 to 13588 of 2018
and
W.M.P.(MD)No.12375 to 12377 of 2018

Tvl.Ganesa & Co.,
Represented by its Partner,
K.Gunalan, aged about 59 years,
S/o.Kulandhaivel Nadar,
No.27-A, Thasildar Pallivasal Street,
East Masi Street,
Madurai - 624 001. ... Petitioner (in all W.P.s)

-Vs-

1. The Commissioner of Commercial Taxes,
   O/o.The Principal and Special Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai - 600 005.

2. The Assistant Commissioner (ST) -
   Munichalai Road Assessment Circle,
   Commercial Taxes Complex,
   Dr.Thangaraj Salai,
   Madurai - 625 001. ...Respondents (in all W.P.s)

Common Prayer: Writ Petitions - filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of the second respondent in TIN:33794900582/2013-14, 2014-15 and 2015-16 dated 19.04.2018, 20.04.2018 and 23.04.2018 respectively and quash the same and to direct the second respondent to re-do the assessment after conducting detailed enquiry and by giving adequate opportunity to us.

For Petitioner : Mr.Raja.Karthikeyan (in all W.P.s)

For Respondents : Mr.J.Padmavathi Devi Special Government Pleader (in all W.P.s)

COMMON ORDER

The petitioner is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006, [hereinafter referred to as "the TNVAT Act"], dealing with consumer goods. In respect of the returns filed for the assessment years 2013-14, 2014-15 and 2015-16, notices were issued by the respondents on 18.09.2017. On the basis of the inspection made by the Enforcement Wing Officials at the place of the business of the petitioner, it was reported that there are a lot of suppression of sales, purchase omissions and claim of excess ITC. The petitioner sought for the details of materials, which have taken from web as well as relied on by the Inspection Team. The respondents also supplied the details with regard to the excess claim of ITC. But, insofar as the purchase omissions were concerned, no materials were supplied. However, it is mentioned that the materials relied on by the respondents were supplied.

2. The learned Special Government Pleader produced the files relating to the assessment made.

3. From the perusal of the files, it is seen that the materials with regard to the purchase omissions to the tune of Rs.37,33,760/- and Rs.1,30,33,004/-, totalling to **Rs.1,67,66,764/-** for the assessment year 2013-14, Rs.25,78,316/- & Rs.98,93,049/- totalling to **Rs.1,24,71,365/-** for the assessment year 2015-16 and Rs.37,33,760/- and Rs.1,30,33,004/-, totalling to **Rs.1,67,66,764/-** for the assessment year 2015-16 were not produced. Therefore, it is very clear that the impugned orders came to be passed without providing the materials relied on by the respondents, which made them to assess penalty. Non production of materials relied on by the respondents, which is provided to the petitioner enabling him to file objections effectively will amount to violation of principles of natural justice.

4. In such circumstances, impugned orders have been passed without supply of materials and therefore impugned orders have been passed in violation of principles of natural justice and liable to be set aside.

5. In the result, the impugned orders are set aside and the writ petitions are disposed of. The matters are remitted back to the respondents for fresh consideration.

6. The respondents are directed to provide all the materials relied on by them before issuing the proposals, call for objections and pass final orders, after giving opportunity of personal hearing to the petitioner. Such exercise shall be done in the light of the case of **Tvl.JKM Graphics Solutions Private**

Limited v. Commercial Tax Officer, Vepery Assessment Circle, Chennai, reported in **2017 (99) VST 343** within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The Commissioner of Commercial Taxes,
   O/o.The Principal and Special Commissioner
   of Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai - 600 005.

2. The Assistant Commissioner (ST) -
   Munichalai Road Assessment Circle,
   Commercial Taxes Complex,
   Dr.Thangaraj Salai,
   Madurai - 625 001.

+ 1 cc TO Mr.B.Rooban , Advocate in SR No. 72609
+ 1 cc TO The Special Government Pleader in SR No. 72807

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AE/SKN RSK/SAR1/24.07.2018/3P/5C

Order made in
W.P.(MD)No.13586 to 13588 of 2018
12.07.2018