BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **10.09.2018**

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)Nos.18781 and 18782 of 2018
and
W.M.P.(MD).Nos.16639 and 16640 of 2018

M/s.N.R.Traders,
rep. by its Proprietor R.Devadoss,
270-272, Nethaji Road,
BiBi Kulam,
Madurai -2. .. Petitioner in both the petitions

Vs.

The Commercial Tax Officer,
Chokkikulam Assessment Circle,
Commercial Taxes Buildings,
Madurai. .. Respondent in both the petitions

COMMON PRAYER: Writ Petitions have been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in TIN No.33445003643/2015-16 and TIN No.33445003643/2016-17 respectively dated 28.03.2018 on the file of the respondent and quash the same as illegal, arbitrary and against the principles of natural justice and direct the respondent to furnish the records as sought for by the petitioner in his reply dated 27.07.2017 and pass assessment orders afresh in the light of the guidelines enunciated in the batch of Writ Petitions in the case of M/s.J.K.M. Solutions Private Limited, reported in 2017(99) VST 343 (Mad), including the opportunity of personal hearing.

For Petitioner in both the petitions : Mr.S.Karunakar

For respondent in both the petitions : Mr.A.Thiyagarajan, Government Advocate

COMMON ORDER

The petitioner is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 and it has been filing returns regularly. Based on the inspection report, the respondent issued a notice, dated 29.05.2017 under Section 27 of the TNVAT Act. On 27.07.2017 the petitioner submitted his objections and also requested the respondent to furnish the records and documents, which led the respondent to make a proposal. After some time, again the petitioner had submitted his objections and requested to furnish records. Instead of furnishing the records and documents, the respondent had issued a notice dated 19.01.2018 directing the petitioner to appear before him on 29.01.2018. According to the petitioner, due to viral fever, he could not appear before the respondent and therefore, he sent his accountant and intimated the same. But, the respondent, without providing another opportunity of personal hearing and also without furnishing the relevant documents, has passed the final assessment orders. Aggrieved over the same, the petitioner is before this Court.

2. Heard the learned counsel appearing for both sides and perused the records carefully.

3. Admittedly, a notice was issued by the respondent on 29.05.2017, which was stated to be received by the petitioner only on 20.07.2017 and immediately thereafter, the petitioner has filed his objections on 27.07.2017. Though the respondent provided an opportunity of personal hearing, due to viral fever, according to the petitioner, he could not appear before the respondent and the same was duly informed through accountant to the respondent. When that be so, the respondent could have fixed another date for personal hearing and communicated the same to the petitioner. A reading of the impugned orders reveal that no such exercise was done by the respondent.

4. In the case of mismatch, it is well settled by the judgment of this Court in **M/s.JKM Graphics Solutions Private Limited, Vs. CTO, Vepery Assessment Circle, Chennai,** reported in **(2017) 99 VST 343 (Mad),** that the assessing authority shall independently apply his mind before arriving at the proposals regarding the defects and it is expected on his to conduct an intra-departmental enquiry to verify the correctness of the transactions with the other end dealers. But, In the instant case, it has not been done so. Further, the assessing authority, without even furnishing necessary documents, has passed the impugned orders. In fact, without furnishing the materials to the dealer calling for the objection by itself is violative of principles of natural justice as the dealer is deprived of effectively defending his case.

5. In view of the above, this Court is inclined to set aside the impugned orders, dated 28.03.2018 and accordingly, the impugned orders are set aside and both the matters are remanded to the file of the respondent. The respondent is directed to follow the guidelines given in the judgment of this Court in **M/s.JKM Graphics Solutions Pvt Ltd., Vs. Commercial Tax Officer, Chennai,** reported in **2017 (99) VST 343** and provide necessary documents to the petitioner for the purpose of filing additional objections. After receiving the objections, the respondent shall fix a date

for personal hearing and then, pass orders on merits and in accordance with law. Such exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. It is needless to say that if the petitioner does not cooperate with the enquiry, the respondent is at liberty to pass appropriate order with the available records.

6. Both the Writ Petitions stand disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar(CS-IV)

To
1.The Commercial Tax Officer,
Chokkikulam Assessment Circle,
Commercial Taxes Buildings,
Madurai.

Copy to

The Section Officer,
ER Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC To MR.S.KARUNAKAR, Advocate SR. NO. 83204
+1 CC TO The Special Government Pleader SR.NO. 84058

Common Order made in
W.P(MD)Nos.18781 and 18782 of 2018
10.09.2018

GCG
TR/RP/SAR-IV(27.10.2018)3P 5C