BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **02.08.2018**

CORAM:

THE HONOURABLE MR.JUSTICE **M.GOVINDARAJ**

**W.P.(MD)No.13530 of 2016**
**and**
**W.M.P.(MD)Nos.10096 and 10097 of 2016**

Sri Vigneshwara Traders,
Represented by its Proprietress,
S.Bhuvaneswari : Petitioner

Vs.

The Deputy Commercial Tax Officer (CT),
Thanjavur II,
Thanjavur,
Thanjavur District. : Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records from the respondent in respect of TIN:335138232360/2011-12, dated 30.06.2016 and quash the same and consequentially, directing the respondent to drop all proceedings pertaining to the impugned order.

For Petitioner : Mr.K.Soundarrajan

For Respondent : Mrs.J.Padmavathi Devi,
Special Government Pleader

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**ORDER**

Challenge to the Writ Petition is the order passed by the respondent in TIN:335138232360/2011-12, dated 30.06.2016.

2. Heard the submissions made on either side.

3. The petitioner is a registered dealer dealing in Stationery and general goods. She submitted monthly return for the assessment year 2011-2012. Pursuant to the surprise inspection conducted by the Enforcement Wing Officials, it is noted that the dealer has

not filed monthly return in Form-I. Thereafter, on the basis of the report submitted by the Enforcement Wing officials, the respondent issued a notice in TIN:335138232360/2011-12, dated 06.06.2016. There also, it is mentioned that the dealer had not filed monthly return in Form-I. Curiously, in the reference, the very same officer has referred the filing of monthly return in Form-I for the year 2011-2012. After receipt of this notice, by letter dated 20.06.2016, the petitioner submitted a copy of the return submitted by her along with the acknowledgement issued by the respondent's office. However, the respondent passed the final order on 30.06.2016 confirming the proposal and imposed penalty.

4. A perusal of the impugned order would go to show that the authority, while passing order, has observed that "the original Form-I returns not available in this office and that the dealer had accepted the suppressions made during 2011-2012 and failed to produce necessary proofs at the time of inspection. Therefore, the burden lies on the dealer to prove the same". The final order passed with this observation clearly shows that there is no application of mind at all. At the first instance, the reference 1 - returns filed in Form I, in the revision notice by itself shows the non-application of mind on the part of the respondent. Even assuming that it is not filed by the petitioner by mistake, the petitioner, by her letter dated 20.06.2016, re-submitted a copy of this return along with the acknowledgement issued by the Office of the respondent. This shows that the petitioner has submitted Form-I returns to the respondent's office. While that being so, the respondent passed the final order stating that the original is not available at the office, which does not appear to be correct.

5. Furthermore, the respondent had been influenced by the report produced by the Inspecting Team. Any statement given before the Inspecting Team shall not be taken as accepted. It has been repeatedly held by various judgments that the Assessing Authority shall independently apply their mind and formulate the proposal and decide the issues on the basis of merits uninfluenced by the report of the Inspecting Team. But, in the instant case, contrary to the directions issued by the Commissioner of Commercial Taxes and also the judgment, the very order is passed being influenced by the report of the Inspecting Team. In such circumstances, I am inclined to set aside the impugned order in TIN:335138232360/2011-12, dated 30.06.2016.

6. In fine, the Writ Petition is allowed and the impugned order in TIN:335138232360/2011-12, dated 30.06.2016 is, hereby, set aside and the matter is remanded back to the respondent for fresh consideration. The respondent shall consider the Form-I filed by the petitioner and pass orders in accordance with law uninfluenced by the report of the Inspecting Team, after affording an opportunity of personal hearing to the petitioner, within a period of four weeks from the date of receipt of a copy of this

order. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CRL SIDE)



/True Copy/

Sub Assistant Registrar(CS-III)

To

The Deputy Commercial Tax Officer (CT),
Thanjavur II,
Thanjavur,
Thanjavur District.

+1cc to Mr.K.Soundarrajan, Advocate Sr.No.77088
+1cc to Spl.Government Pleader Sr.No.76988

SML

VB/KAK/SAR3/13.08.2018/3P/4C

Order made in
**W.P.(MD)No.13530 of 2016**
**Dated: 02.08.2018**