**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: **04.03.2019**

CORAM
**THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**

**W.P.(MD).Nos.5056 & 5057 of 2019**
**&**
**W.M.P.(MD) Nos.4033 & 4034 of 2019**

Tvl.Gopra Traders,
Rep., by its Partner,
V.Gopalakrishnan, aged about 56 yrs,
S/o P.V.Varadarajan,
No.113-D, Perumal East Car Street,
Thirunelveli - 627 001 ... Petitioner in both Writ Petitions

-vs-

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

2) The State Tax Officer (ST),
Thirunelveli Junction Assessment Circle,
Commercial Tax Building,
Reserve Line Road,
Palayamkottai,
Thirunelveli District 627 002 ... Respondents in both Writ Petitions

**COMMON PRAYER:** Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for records pertaining to the impugned proceedings of the 2nd respondent in TIN. Nos.33805540437/ 2014-15 & 2015-16 dated 23.05.2018 & 05.09.2018 respectively and quash the same.

**In both Writ Petitions:**

For Petitioner : Mr.B.Rooban

For Respondents : Mr.N.Shanmugaselvam, Additional Government Pleader



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**COMMON ORDER**

Since the issue involved in both the writ petitions are one and the same, both the writ petitions are disposed of by this common order.

2. The instant writ petitions have been filed challenging the assessment orders passed by the second respondent in TIN Nos.33805540437/2014-15 & 2015-16 dated 23.05.2018 and 05.09.2018 respectively.

3. It is the case of the petitioner that he is a registered dealer under the TN VAT Act 2006. According to him, he has availed the compound assessment scheme under Section 3(4) of the TN VAT Act 2006. According to him, as per the compounding assessment scheme, the petitioner shall not collect tax for the sales and purchase and shall not avail input tax credit but shall pay 0.5% on the total taxable sales. It is their case that they received a notice dated 07.05.2018 from the respondents alleging that the petitioner has collected tax on their purchases in violation of Section 3(4) of the TN VAT Act 2006.

4. It is also their case that the petitioner replied to the said show cause notice dated 07.05.2018, on 12.05.2018, denying the collection of tax on sales and calling upon the respondents to furnish the details of the sales. According to the learned counsel for the petitioner, the said reply dated 12.05.2018 was also received by the respondents on 14.05.2018, as seen from the acknowledgment card. It is the case of the petitioner that even though a reply was sent, denying the collection of tax, the respondents, by the impugned assessment order dated 23.05.2018 has observed that no reply was given by the petitioner stating objections to the notice dated 07.05.2018 sent by them.

5. According to the petitioner, even after the receipt of the impugned assessment order dated 23.05.2018 from the respondents, the petitioner sent another letter dated 18.06.2018 informing them that they did not consider the reply dated 12.05.2018 sent by the petitioner in their assessment order and requested them to verify once again and pass a correct assessment order. According to the petitioner, despite the said request to correct the assessment order, the respondent has not corrected the same. In such circumstances, the instant writ petitions have been filed.

6. Heard Mr.B.Rooban, learned counsel for the petitioner and Mr.N.Shanmugaselvam, learned Additional Government Pleader appearing for the respondents.

7. It is evident from the materials available on record that to the notice dated 07.05.2018 sent by the respondents to the petitioner alleging that as per their web report, the petitioner has collected the tax on sales in violation of section 3(4) of the TN

VAT Act, 2006 was replied by the petitioner on 12.05.2018 and was duly acknowledged by the respondents on 14.05.2018, as seen from the acknowledgment card. It is the case of the petitioner that as seen from the reply dated 12.05.2018, that he has not collected any tax amount from any party in violation of the compounding Scheme under Section 3(4) of the TN VAT Act 2006. But in the impugned assessment order dated 23.05.2018, the respondents have observed that no reply was received from the petitioner for the notice dated 07.05.2018 sent by them. Further, as seen from the impugned assessment order, no personal hearing was granted to the petitioner to raise all his objections available to him under law.

8. It is a settled law as seen from various judicial pronouncements by this Court that sufficient opportunity must be given to the Assessee before passing the assessment order under Section 27 of the TN VAT Act, 2006. In the instant cases, since sufficient opportunity was not given to the petitioner and the respondents also did not consider the objections sent by the petitioner before passing the assessment order, the impugned assessment order will have to be necessarily quashed. Even though in the impugned assessment order, the respondents have observed that they had enclosed the sales details, the petitioner denied the receipt of the same.

9. In the result, the impugned proceedings of the second respondent dated 23.05.2018 and 05.09.2018 in TIN Nos.33805540437/2014-15 & 2015-16 is hereby quashed and the matter is remanded back to the respondents for fresh consideration, who shall pass final orders after giving sufficient opportunity to the petitioner, including granting them the right of personal hearing within a period of eight (08) weeks from the date of receipt of a copy of this order. With the aforesaid direction, the **Writ Petitions are disposed of**. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Crl.Side)

// True Copy //

Sub Assistant Registrar(CS )

To

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

2) The State Tax Officer (ST),
Thirunelveli Junction Assessment Circle,
Commercial Tax Building,
Reserve Line Road,
Palayamkottai, Thirunelveli District 627 002

+2 CC to M/s.B.ROOBAN, Advocate in SR Nos.51583 & 51584
+1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No.51763

W.P.(MD).Nos.5056 & 5057 of 2019

sts
PK/24.04.2019 : 4P/6C