

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

DATED: 10.04.2019

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**THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE****W.P. (MD) .5368 of 2019****and****W.M.P. (MD) .No.4274 of 2019**

M/s.Sri Shiva Varthni Trading Company,  
Represented by its Proprietor,  
T.Gunasekaran,  
No.126-A, Gandhi Road,  
Alangudi-622 301,  
Pudukottai District.

... Petitioner

-vs-

The Deputy Commercial Tax Officer (ST),  
Pudukottai-II Assessment Circle,  
Pudukottai.

... Respondent

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the respondent in TIN NO.33794124194/2015-2016 dated 21.01.2019 which was received on 07.02.2019 and quash the same as illegal, arbitrary and against the principles of natural justice.

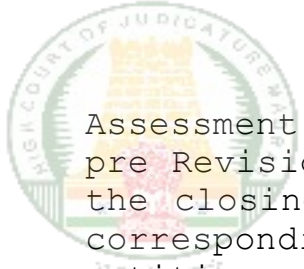
For Petitioner : Mr.K.Soundararajan

For Respondent : Mr.D.Muruganantham  
Additional Government Pleader

**O R D E R**

The instant writ petition has been filed challenging the Assessment Order dated 21.01.2019 passed by the respondent in TIN NO.33794124194/2015-2016.

2.It is the case of the petitioner that he is a registered dealer under the Tamil Nadu Value Added Tax (TN VAT) Act, 2006. According to him, he has been regularly filing his monthly returns under the Tamil Nadu Value Added Tax Act, 2006 which has also been accepted by the respondent under Section 22 (2) of the TN VAT Act, 2006 on deemed assessment basis. The respondent proposed to revise the assessment of the petitioner for the



Assessment Year 2015-2016. On 16.03.2018, the respondent issued a pre Revision notice informing the petitioner that he had not shown the closing stock of Groundnut Kernel and therefore estimated the corresponding sales turn over. It is also the case of the petitioner that subsequently, on 17.08.2018, the respondent issued another pre Revision notice proposing to revise the assessment on account of suppression of interstate purchases by the petitioner based on MIS Report. According to the petitioner, a detailed reply was sent by him on 03.09.2018. Denying the allegations made by the respondent and stating that no suppression of interstate purchases were made by the petitioner. In their reply, the petitioner had also submitted that the revision of assessment can be done only after furnishing the copies of materials based on which the revision of assessment was made. In his reply he also referred to the judgment of this Court in the case of **JKM Graphics Solutions Private Limited Vs. CTO, Vepery Assessment Circle** reported in **99 VST 343**, wherein according to the petitioner, it is held that the revision of assessment should be made after furnishing the copies of the materials based on which revision of assessment was proposed. In his reply, the petitioner categorically stated that the said decision has not been followed by the respondent while issuing the pre Revision notice. In the aforesaid reply the petitioner had also asked for a personal hearing in the assessment proceedings.

3.By the assessment order dated 21.01.2019, the respondent assessed the interstate purchases of taxable goods and assessed the turnover of the interstate purchases of taxable goods not disclosed in the turnover and the relative sales suppression of Rs.41,02,560/- and according to the respondent since the said amount has escaped assessment, the petitioner is liable to pay additional tax and penalty. Aggrieved by the impugned assessment order dated 21.01.2019, the instant writ petition has been filed.

4.Heard Mr.K.Soundararajan, learned counsel appearing for the petitioner and Mr.D.Muruganantham, learned Additional Government Pleader appearing for the respondent.

5.The learned counsel for the petitioner drew the attention of this Court, to the single bench judgment of this Court in the case of **JKM Graphics Solutions Private Limited Vs. CTO, Vepery Assessment Circle** reported in **99 VST 343**. As per the aforesaid judgment, revision of assessment can be done only after furnishing the required materials to the assessee. According to the learned counsel for the petitioner in the instant case, the respondent has not furnished a copy of the web report to the petitioner and has also not examined the other and sellers and cross verified with them. According to him, the decision referred to *supra* is squarely applicable to the facts of the instant case. Further, it is his case that no personal hearing



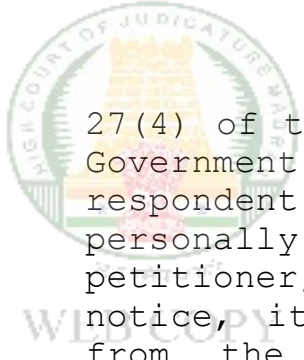
was offered to the petitioner as seen from the impugned assessment order. The learned counsel for the petitioner also drew the attention of this Court to the impugned assessment order wherein the interstate purchases allegedly made by the petitioner refers to goods which included medical instruments and pulses. According to him, the petitioner is only a dealer of Groundnut Kernel and does not deal with medical instruments and pulses. According to the learned counsel for the petitioner there is total non application of mind by the respondent while passing the impugned assessment order.

6. Per contra, the learned Additional Government Pleader appearing for the respondent would submit that all the objections raised by the petitioner in his reply dated 03.09.2018 has been duly considered in the impugned assessment order. He also submitted that personal hearing was granted to the petitioner. According to him, despite the receipt of the personal hearing notice dated 10.11.2018, the petitioner did not choose to make use of the personal hearing. Further regarding the submission made by the learned counsel for the petitioner that the other end sellers ought to be examined, the learned Additional Government Pleader would submit that the same is not necessary. Since only based on the check post report, it was found that the petitioner had made interstate purchases which were not reported to the respondent. According to the learned Additional Government Pleader, that is the reason for sending the second pre Revision notice dated 17.08.2018 wherein. According to the learned Additional Government Pleader, in the pre-revision notice it has been categorically stated that on verification of MIS Report and check post records available in the department Web site only it reveals that the petitioner failed to disclose the interstate purchases of taxable goods in the Annexure-IA of Form- I Return filed by him. According to the respondent, the Output Tax payable during the year 2015-2016 has not been paid by the petitioner as disclosed in the pre-revision notice dated 17.08.2018.

7. According to the Additional Government Pleader for the respondent, the impugned assessment order is a well considered order and therefore, the only alternate remedy available to the petitioner is to be filed a statutory appeal under Section 51 of the Tamil Nadu Value Added Tax Act, 2006.

### **Discussion:**

8. This Court has perused and examined the impugned assessment order dated 21.01.2019. As seen from the assessment order, no personal hearing was afforded to the petitioner in the revision of assessment proceedings. It is the case of the petitioner that no personal hearing notice was received by him in the revision of assessment proceedings initiated by the respondent under Section



27(4) of the TN VAT Act, 2006. Even though the learned Additional Government Pleader has produced from the file maintained by the respondent that the pre-revision notice dated 17.08.2018 was personally delivered to the authorised representative of the petitioner, as seen from the signature contained in the said notice, it cannot be confirmed that the signature was obtained from the authorised representative of the petitioner. The signature of the petitioner as found in the affidavit filed in support of the writ petition and the signature contained in the pre-revision notice dated 17.08.2018, which was allegedly handed over to the authorised representative of the petitioner by the respondent are totally different.

9. For the aforesaid reasons, this Court finds that the impugned assessment order has been passed only based on the web report which discloses mismatch between the reported sales of the other end seller and the reported purchase of the petitioner. As rightly contended by the learned counsel for the petitioner, the judgments relied upon by him is squarely applicable to the facts of the instant case. For the foregoing reasons, it is evident that adequate opportunity was not granted to the petitioner to raise all objections available to him under law by the respondent before passing the impugned assessment order and therefore, the respondent has violated the principles of natural justice.

10. In the result, the impugned assessment order dated 21.01.2019 passed by the respondent **and the consequential letter of demand dated 24.12.2018 issued by the respondent** is hereby quashed and the matter is remanded back to the respondent for fresh consideration and the respondent shall pass final orders after affording adequate opportunity to the petitioner to raise all objections available to him under law and also permit him to file a reply and also afford him the right of personal hearing and pass final orders within a period of eight (08) weeks from the date of receipt of a copy of this order. Accordingly, the **Writ Petition is disposed of**. No costs. Consequently, W.M.P.(MD). No.4274 of 2019 is closed.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)



To:

The Deputy Commercial Tax Officer (ST),  
Pudukottai-II Assessment Circle,  
Pudukottai.

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+1 CC to Mr.K.SOUNDARARAJAN, Advocate ( SR-60268[F] dated  
10/04/2019 )

+1 CC to SPECIAL GOVERNMENT PLEADER( SR-60548[F] dated  
11/04/2019 )

Order made in  
**W.P. (MD) .5368 of 2019**  
**and**  
**W.M.P. (MD) .No.4274 of 2019**  
**10.04.2019**

**vsg**

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