BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.03.2019**

CORAM
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD).Nos.6125 & 6126 of 2019

and

W.M.P.(MD) Nos.4882 and 4883 of 2019

&

4914 and 4915 of 2019

M/s Sri Ganga Power Batteries,
Rep., by its Partner – K.Essakiappan ... Petitioner in both W.P.'s

-vs-

The State Tax Officer,
Tirunelveli Bazaar Circle,
Tirunelveli,
Tirunelveli District. ... Respondent in both W.P.'s

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records on the file of the respondent in its impugned proceedings made in TIN:33425641817/2010-11 & 2011-12 respectively dated 26.12.2018 quash the same as illegal and contrary to the scheme of the Act.

In both W.P's: For Petitioner: Ms.S.Mahalakshmi
For Ms.R.Hemalatha

For Respondent: Mr.M.Jeyakumar,
Additional Government Pleader

C O M M O N O R D E R

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 dated 26.12.2018 passed by the respondents in TIN:33425641817/2010-11 and 2011-12 respectively.

3. It is the case of the petitioner that they are a dealer in Inverters and Batteries at Tirunelveli and their business has been registered under the Tamil Nadu Value Added Tax (TN VAT) Act,2006.

It is their case that the Enforcement Wing officials of the respondent inspected their business premises on 29.04.2015 and thereafter without giving an opportunity to the petitioner to disprove their contention, have concluded that there is a mismatch between the sales and purchases reported by the other end seller as well as the petitioner, who is the purchaser. According to the petitioner, the respondent ought not to have accepted the report of the Enforcement Wing officials in entirety without giving an opportunity to the petitioner to raise all objections available to them under law. According to the petitioner, all the purchases effected by them from the other end seller were duly reported to the respondent and there is no suppression of purchases. But without giving an opportunity to the petitioner to raise all his objections regarding the alleged mismatch, the respondent even without affording the right of personal hearing to the petitioner has passed the impugned assessment order. In such circumstances, the instant writ petition has been filed.

4. Heard Ms.S.Mahalakshmi, learned counsel appearing on behalf of Ms.R.Hemalatha, learned counsel for the petitioner and Mr.M.Jeyakumar, learned Additional Government Pleader accepts notice on behalf of the respondent.

5. It is now settled law as laid down by the Division bench judgment of this Court in the case of ***J.K.M.Graphics Solutions Pvt., Limited vs CTO, Vepery Assessment Circle, Chennai*** in the decision reported in **(2017) 99 VST 343** wherein it has been held that in case of mis-match, duty has been cast upon the department to make an independent and complete enquiry. In the same decision, it has also been held that non-reporting of sale of the other end dealer would not make the dealer, who is a purchaser liable. In the instant case also, the petitioner has reported the purchases effected from the other end seller to the respondents. But, the other end seller has allegedly not reported the sale to the respondents.

6. Further, no personal hearing was afforded to the petitioner by the respondent as seen from the impugned assessment order. Even as per their own internal circular issued by the Principal Secretary, Commercial Taxes Department, in No.3 of 2007, personal hearing ought to have been afforded to the petitioner. But admittedly, in the instant case, no personal hearing was afforded to the petitioner. For the foregoing reasons, this Court is of the considered view that the principles of natural justice have been violated by the respondent before passing of the impugned Assessment order.

7. In the result, the impugned assessment order dated 26.12.2018 passed by the respondent in TIN:33425641817/2010-11 and 2011-12 respectively is hereby quashed and the matters are remanded back to the respondent for fresh consideration, who shall pass final orders after giving sufficient opportunity to the petitioner

including granting 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

// True Copy //

Sub Assistant Registrar(CS)

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To

The State Tax Officer,
Tirunelveli Bazaar Circle,
Tirunelveli,
Tirunelveli District.

+1CC TO MR.R.HEMALATHA, Advocate Sr. No. 54720
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 54649

Common Order made in
W.P.(MD).Nos.6125 & 6126 of 2019
15.03.2019

TR (05.04.2019) 3P 4C