BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.04.2019**

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.7494 of 2019

and

W.M.P.(MD) No.5991 of 2019

M/s.M.S.Marketing,
Represented by its Proprietor M.Selvi,
No.8-21 A, Kaliamman Koil Street,
Vilangudi, Madurai 625 018 ... Petitioner

Vs

The Deputy Commercial Tax Officer,
West Veli Street Assessment Circle,
Commercial Taxes Buildings,
Madurai 20 ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records on the file of the respondent in TIN No.33725024829/2013-14 dated 28.08.2017 which was intimated through final letter on 24.12.2018 issued by the respondent and quash the same is wholly without jurisdiction being contrary to the judgment of this Court reported in the case of the Assistant Commissioner (CT) Koyambedu Assessment Circle Chennai vs Infiniti Wholesale Ltd. VS. reported in [2017] 99 VST 430 and direct the respondent to conduct an enquiry with other end dealers as contemplated under Section 27 of the TN VAT Act, 2006 and pass a assessment order afresh in the light of the guidelines enunciated in the batch of Writ petitions in the case of M/s.JKM Solutions Private Limited reported in 2017 (99) VST 343 (Mad) including the opportunity of personal hearing to the petitioner.

For Petitioner : Mr.G.Kasinathadurai

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

O R D E R

The instant Writ Petition has been filed challenging the Assessment Order dated 28.08.2017 passed by the respondent in TIN No.33725024829/2013-14 which was intimated to the petitioner by the letter of the respondent dated 24.12.2018.

2. It is the case of the petitioner that she is a registered dealer under the Tamil Nadu Value Added Tax (TN VAT) Act, 2006.

According to her, she has been regularly filing her monthly returns before the respondent, which has also been accepted by the respondent under Section 22(2) of the TN VAT Act, 2006. But, according to her, based on the web report, the respondent revised the assessment for the Assessment Year 2013-14 under Section 27(4) of the TN VAT Act, 2006 without giving notice to the petitioner.

3. According to the petitioner, she was not afforded adequate opportunity to raise all objections available to her under law to the proposal made by the respondent to revise the assessment for the Assessment Year 2013-14. After passing of the assessment order, the respondent issued the final notice of demand dated 24.12.2018 calling upon the petitioner to pay the tax as per the assessment order dated 28.08.2017. Aggrieved by the assessment order dated 28.08.2017 and consequential notice of demand dated 24.12.2018, the instant writ petition has been filed.

4. Heard Mr.G.Kasinathadurai, learned counsel for the petitioner and Mr.N.Shanmugaselvam, learned Additional Government Pleader appearing on behalf of the respondent.

5. The learned counsel for the petitioner drew the attention of this Court to the impugned assessment order dated 28.08.2017 passed by the respondent and submitted that without even serving any notice to the petitioner and without affording an opportunity of personal hearing to the petitioner, the respondent has passed the impugned assessment order. According to the learned counsel for the petitioner, merely based on the web report, the impugned assessment order has been passed. He also drew the attention of this Court to the following judgments of this Court:-

(a) ***JKM Graphics Solutions P Ltd., V. CTO, Vepery Assessment Circle, Chennai*** reported in **(2017) 99 VST 343 (Mad)**, wherein the learned counsel for the petitioner submitted that the respondent while passing the impugned assessment order did not follow the guidelines issued by this Court with regard to the mismatch of purchases/sales.

(b)***Tvl.Althaf Shoes (P) Ltd., vs, Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai*** reported in **(2012) 50 VST 179** *and*

(c)***Assessment Commissioner (CT) Koyambedu Assessment Circle, Chennai vs., Tvl.Infiniti Wholesale Limited*** reported in ***(2017) 99 VST 430*** wherein it has been laid down that if the dealer establishes payment of tax for all the purchases, there is no power for the Authority to revoke the input tax credit on the ground that the other end seller has not paid the tax.

6. Per Contra, the learned Additional Government Pleader appearing on behalf of the respondent would submit that the pre-revision notice for the assessment year 2013-14 under Section 27(4) of the TN VAT, Act 2006 was issued on 07.07.2017 to the petitioner before passing of the impugned assessment order. He

also produced the file which contained the said notice before this Court today. Therefore, according to him, adequate opportunity was granted to the petitioner before the impugned assessment order was passed. He also referred to Rule 19 of the Tamil Nadu Value Added Tax Rules, 2007 regarding the service of notices, summons or orders and submitted that since the pre-revision notice dated 07.07.2017 was handed over to the authorised representative of the petitioner, it is 'proper service of notice' in accordance with Rule 19 of the Tamil Nadu Value Added Tax Rules, 2007.

7. Further, he contended that there is an alternate efficacious statutory remedy available to the petitioner under Section 51 of the TN VAT Act, 2006 and instead of exhausting the same, the petitioner has approached this Court by filing the writ petition which is not maintainable.

Discussion:

8. This Court has perused and examined the impugned assessment order dated 28.08.2017 . As seen from the assessment order, no personal hearing was afforded to the petitioner before the said assessment order was passed against her. It is the case of the petitioner that no pre-revision notice was received by her 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 07.07.2017 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 07.07.2017, 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 are 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 her 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 28.08.2017 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 raise all objections available to her under law and also permit her to file a reply and also afford her 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.5991 of 2019 is closed.

SD
ASSISTANT REGISTRAR (CO)

TRUE COPY

SUB ASSISTANT REGISTRAR(CS II)

sts
To
The Deputy Commercial Tax Officer,
West Veli Street Assessment Circle,
Commercial Taxes Buildings,
Madurai 20

1CC TO MR. G. KASINATHADURAI, ADVOCATE SR 58986
1CC TO THE SPL GOVT PLEADER SR 58850

KK
4/4/2019
4P 4C

Order made in
W.P.(MD)No.7494 of 2019