BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.06.2019**

CORAM:

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.(MD)No.17350 of 2015
and
M.P.(MD)No.1 of 2015

Tvl.ESS ESS Exports,
Represented by its Proprietor Thiru.M.Sivakumar,
D.No.7/328, Sattur Main Road,
Elayirampannai – 626 201,
Virudhunagar District. ... Petitioner

Vs.

1.Commercial Tax Officer (Addl.),
Sattur, Virudhunagar District.

2.The Commercial Tax Officer,
Enforcement Group No -III,
C.T.Buildings, Satchayapuram,
Sivakasi, Virudhunagar District. ... Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the first respondent in his proceedings in TIN 33575782821/2014-15 dated 31.08.2015 received by the petitioner on 15.09.2015 and quash the same and to direct the first and second respondents to refund or return the advance tax and compounding fees of Rs.6,34,647/- collected from the petitioner during the course of inspection on 09.09.2015 by Cheque.

For Petitioner : Mr.A.S.Mujibur Rahman
For Respondents : Mr.R.Murugan
Additional Government Pleader

ORDER

The short point that arises in the challenge to impugned order dated 31.08.2015 is the lack of personal hearing prior to completion of assessment proceedings.

2. Heard Mr.A.S.Mujibur Rahman, learned counsel appearing for petitioner and Mr.R.Murugan, learned Additional Government Pleader appearing for respondents.

3. The impugned order is an order of assessment under the provisions of Tamil Nadu Value Added Tax Act, 2006 [in short “Act”]. Though notices have been issued to the petitioner and replies / objections have been filed, the specific ground raised assailing the

impugned order is that no opportunity of personal hearing has been granted to the petitioner prior to completion of the proceedings for assessment.

4. The learned counsel appearing for respondents fairly does not dispute this fact.

5. This Court has been taking a consistent view that it is incumbent on the authority to afford an opportunity of personal hearing prior to completion of assessment. In fact, the Department has also issued several Circulars reiterating this position and informing the Assessing Officers of the proper procedure to be followed in the matter of framing of assessment, which should include the grant of personal hearing.

6. In Circular dated 03.02.2014, the Principal Secretary / Commissioner of Commercial Taxes, Chepauk, Chennai – 5, states as much at Paragraph No.3 thereof. I extract the relevant portion below:

> *"**Passing of Orders:***
>
> *Fifteen days time limit shall be given as reasonable opportunity to dealers before passing any order and it shall be reckoned from the date of service of the notice. No order shall be passed without being satisfied of the reasonable opportunity and adopting the following process.*
>
> *i. After issue of notice calling for the objections, if any further time is requested by the dealer within a period of fifteen days, it shall be examined and reply to be given to the dealer regarding granting of time or not as the case may be only if, there exists a genuine reason.*
>
> *ii. Objections filed by the dealer on the pre-assessment / revision notices shall be examined in each and every issue meticulously and speaking order shall be passed addressing the objections raised. In short, the speaking order which is complete shall be passed.*
>
> *iii. As the provision in the TNVAT Act stipulates the conditions of granting or personal hearing. It may be intimated in the notice and it shall invariably be afforded to the dealer irrespective of whether the dealer has opted for personal hearing or not."*

7. The Commissioner states that the dealer shall be afforded an opportunity of personal hearing irrespective of whether it has been sought.

8. In the light of the above discussion, I am inclined to set aside the impugned order.

9. The assessee / petitioner shall appear before the Assessing Authority, on 21.06.2019 at 02.30 p.m., and the officer shall complete proceedings for assessment *de novo*, after affording due opportunity to the assessee, within a period of four weeks from the conclusion of the personal hearing.

10. This Writ Petition is allowed in the aforesaid terms. No costs. Consequently, connected Miscellaneous Petition is closed.

sd/
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1.Commercial Tax Officer (Addl.),
Sattur, Virudhunagar District.

2.The Commercial Tax Officer,
Enforcement Group No -III,
C.T.Buildings, Satchayapuram,
Sivakasi, Virudhunagar District.

+1 CC to Mr.A.S.MUJIBUR RAHMAN, Advocate (SR-67690[F] dated 10/06/2019)
+1 CC to SPL GP (SR-67845[F] dated 11/06/2019)

W.P.(MD)No.17350 of 2015
10.06.2019

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