BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.02.2019**

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)No. 12627 of 2016

and

W.M.P(MD) No. 9542 of 2016

Tvl.SREE KODI PHARMACY,
represented by its Partner
R. Subramanian S/o.S.P.M. Ramasamy,
No.4, Sheba Building,
East Veli Street, Madurai - 625 001. ... Petitioner

Vs.,

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

2) The Deputy Commercial Tax Officer,
Kamarajar Salai Assessment Circle,
Commercial Tax Complex,
Dr. Thangaraj Salari,
Madurai - 625 020. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned proceedings of the 2nd respondent in TIN No. 33224822374/2014-15 dated 23.09.2015 and quash the same.

For Petitioner : Mr.B. Rooban for
Mr.R. Veeramanikandan

For Respondents : Mr.R. Karthikeyan
Additional Government Pleader

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O R D E R

The instant writ petition has been filed challenging the Assessment order dated 23.09.2015 passed by the second respondent in TIN.33224822374/2014-15 and quash the same.

2.The case of the petitioner is that they are a registered dealer with the second respondent, under the Tamil Nadu Value Added Tax Act, 2006.

3. According to the petitioner, the impugned assessment order

dated 23.09.2015 was passed by the second respondent, without proper consideration of the reply, dated 10.09.2015 sent by the petitioner to the second respondent, wherein they have stated that by mistake their TIN number was wrongly mentioned in the reported purchases to the department, instead of the TIN number of seller. The TIN number of the other end seller is TIN No.33154803449 and the petitioner's TIN number is 33224822374.

4. According to the petitioner, eventhough in the impugned assessment order it has been mentioned by the second respondent about the wrong mentioning of the TIN Number, without application of mind, the second respondent has passed the impugned assessment order, calling upon the petitioner to pay the tax as well as penalty, which according to the petitioner, they are not liable to pay. In such circumstances, the instant Writ Petition has been filed by the petitioner to quash the impugned assessment order.

5. Heard Mr.B. Rooban for Mr.R. Veeramanikandan, learned counsel appearing for the petitioner and Mr.R. Karthikeyan, learned Additional Government Pleader, appearing for the respondents.

6. The respondents have also filed their counter in the Writ Petition and they have reproduced the assessment order which is the subject matter of challenge in this Writ Petition.

7. This Court has perused and examined the impugned assessment order. As rightly contended by the learned counsel for the petitioner, eventhough, the second respondent has mentioned in the impugned assessment order about the wrong quoting of the TIN Number of the petitioner instead of the other end seller, namely, M/s.Sarojini Enterprises, the second respondent has passed the impugned assessment order, without taking into consideration, the factual mistake committed by the petitioner inadvertently mentioning the wrong TIN number.

8. In the considered view of this Court, the second respondent failed to apply his mind. Further more, as seen from the impugned proceedings, no personal hearing was afforded which is mandatory as held by various decisions of this Court.

9. For the aforesaid reasons, it is clear that the second respondent has violated the principles of natural justice, by not affording sufficient opportunity to the petitioner, including the right of personal hearing, before passing the impugned assessment order.

10. In the result, this Writ Petition is allowed and the impugned assessment order, dated 23.09.2015 in TIN No.33224822374/2014-15 is hereby quashed and the matter is remanded back to the second respondent, for fresh consideration. The second respondent is directed to pass a fresh order, after affording sufficient opportunity including the right of personal hearing to the petitioner to enable the petitioner to raise all objections

available to them under law, and the second respondent, shall pass a fresh order on merits and in accordance with law, within a period of Six (6) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

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To

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

2) The Deputy Commercial Tax Officer,
Kamarajar Salai Assessment Circle,
Commercial Tax Complex,
Dr. Thangaraj Salari, Madurai - 625 020.
+1CC to Mr.B.ROOBAN , Advocate SR.No.49268.
+1CC to The Special Government Pleader SR.No. 49462.

Order made in
W.P.(MD)No.12627 of 2016

22.02.2019

DS/ /SAR- (26.03.2019) 3P 5C