BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.07.2019**

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)Nos.19818 to 19821 of 2014
and M.P(MD)Nos. 1, 1, 1 and 1 of 2014

In all writ petitions:
Tikam Chand
S/o Lakshmi Chand,
Proprietor
M/s Chandan Paper Stores ... 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 Commercial Tax Officer,
Tirunelveli Bazaar Assessment Circle,
Commercial Tax Building Complex,
A.R.Line Road,Palayamkottai,
Tirunelveli District - 627 002. ... Respondents

PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari calling for the records pertaining to the impugned proceedings of the second respondent in TIN No.33475641353/2012-2013,2010-2011, 2011-2012 and 2013-2014 dated 30.10.2014 and quash the same.

In all the writ petitions:

For Petitioner : Mr.B.Rooban
For Respondents : Mr.S.Angappan
Government Advocate

COMMON ORDER

Assessment orders for four periods are impugned before me, 2010-11, 2011-12, 2012-13 and 2013-14 all dated 30.10.2014.

2. The petitioner deals in paper and stationery. Since its transactions fall below the threshold of Rs.50 lakhs, the petitioner had sought compounding of assessment in terms of Section 3(4) of The Tamil Nadu Value Added Tax Act, 2004 (in short 'Act'). Pre-assessment notices dated 06.08.2014 were issued alleging a mismatch of the details of the petitioners' purchase turnover with

corresponding details available in the website of the Commercial Taxes Department. According to the respondent, the quantum of purchases are substantially more than the quantum of sales effected. According to the Assessing Officer, the ratio is 74%:26%, 84%:16%, 80%:20% and 77%:23% respectively. Accordingly, he alleged that there is suppression of purchase turnover.

3. The petitioner, admittedly, only sought an adjournment in response dated 18.08.2014 and did not raise any argument or file any materials to substantiate his case. The impugned orders have thus come to be passed on the ground that the petitioner has not responded to the pre-assessment proposals.

4. However, nothing prevented the Assessing Authority to call upon the petitioner to appear in person and explain his stand and, in fact, it was incumbent upon him to do so. On merits, it is not *prima facie,* unreasonable to expect that the purchases that did not translate into sales would have been part of the stock account for the particular year. An opportunity ought to have been given to the petitioner to confirm this position. This has admittedly not been done.

5. In the light of the apparent violation of the principles of natural justice, the impugned orders of assessment are quashed. The matters are remitted back to the file of the Assessing Authority. The petitioner will appear before the Assessing Authority on Wednesday i.e on 24.07.2019 at 10.30 a.m. The Assessing Officer, after hearing the petitioner and considering all evidences as may be presented by him shall frame orders of assessment *de novo* within a period of four weeks from date of conclusion of personal hearing.

6. In fine, the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)

CM

TO

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

2.The Commercial Tax Officer,
Tirunelveli Bazaar Assessment Circle,
Commercial Tax Building Complex,
A.R.Line Road,
Palayamkottai,
Tirunelveli District - 627 002.

+1CC TO MR.B.ROOBAN, Advocate Sr. No.75474

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15.07.2019

CO(CO)
TR (23.07.2019) 3P 4C