BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **05.08.2019**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**

W.P.(MD)No.7579 and 7580 of 2014
and
M.P.(MD)No.1 and 1 of 2014

Tvl.Asika Thanga Maligai,
Represented by its Proprietor,
Mr.V.A.Jagabar Sadiq, 25, Nageswaran North Street,
Kumbakonam. ... Petitioner in both W.P.s

/Vs./

1.The Secretary to Tamil Nadu Government,
Commercial Taxes and Registration Department,
Secretariat, Chennai - 600 009.

2.The Assistant Commissioner (Commercial Taxes),
Kumbakonam Assessment Circle - I,
Kumbakonam. ... Respondents in both W.P.s

COMMON PRAYER:- Writ Petitions - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the second respondent in TIN/33983941293/2007-08 and 2008-09 dated 28.03.2014 and quash the same.

For Petitioner : Mr.P.R.Kumar & D.Venkataesh

For Respondents : Mr.R.Murugan
Additional Government Pleader
(in both petitions)

COMMON ORDER

The petitioner has approached this Court challenging orders of assessment for the years 2007-08 and 2008-09 both dated 28.03.2014, passed in terms of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act').

2. An inspection appears to have been conducted by the Enforcement Wing of the Commercial Taxes Department on 13.08.2010, in the course of which, the Officers noticed that the petitioner had not defrayed purchase tax liability in terms of Section 12 of the Act. Based on the aforesaid alleged defect as well as a sworn

statement recorded in the course of the inspection, the Officer proposed to revise the original assessments, bringing to tax turnover representing purchases.

3. The petitioner has not enclosed a copy of the reply filed by him before the assessing officer. However, the impugned order refers to and extracts the reply, as follows:

> *'The assessment order passed in TIN:33983941293/2007-08, dated 01.07.2011 in which it has stated that there is an excess payment of Rs.11,097/-. Since we have paid Rs.9,49,131/- towards purchase tax as against the due of Rs.9,31,448/-. In view of the above fact there is no due on purchase turnover under Section 12 of the Act and requested to drop the proposal of revision of Assessment.'*

4. The methodology of computation adopted by the assessee is unclear and has justifiably, not found favour with the assessing officer, who was of the view that though the purchase tax was not paid, the assessee has taken credit of the Input Tax in the computation of tax. The proposal for assessment thus stood confirmed. As against the same, the petitioner has filed the present writ petition.

5. At the outset, I am to state that the facts necessary to determine the dispute in question are not available on record. The stand of the assessee as per its objections is also not available except for the extract contained in the order of assessment. Neither there is any clarity in the order of the assessment as to the methodology adopted by the officer. Even before me, the learned counsel for the petitioner is unable to provide any clarity despite repeated questions being posed to him on this aspect.

6. Thus, without expressing any opinion on the merits of the case, the assessing authority is directed to give an opportunity of personal hearing to the assessee, since this has admittedly not been afforded to the assessee, prior to finalisation of the assessment, hear the assessee, and pass orders of assessment *de novo*, within a period of **six weeks from today**.

7. The Writ Petitions are disposed of in the aforesaid terms. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-II)

/TRUE COPY/

Sub Assistant Registrar

To

1.The Secretary to Tamil Nadu Government,
Commercial Taxes and Registration Department,
Secretariat, Chennai - 600 009.

2.The Assistant Commissioner (Commercial Taxes),
Kumbakonam Assessment Circle - I,
Kumbakonam.

+1 CC to M/s.SPL GP (SR-79994[F] dated 06/08/2019)

Common Order made in
W.P.(MD)No.7579 and 7580 of 2014
Dated:
05.08.2019

sm
JM/12.09.2019/3P/4C