BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.07.2019**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**

W.P.(MD)No.2563 of 2016
and
W.M.P.(MD)No.2266 of 2016

Tvl.JEYAM MOTORS,
Represented by its Proprietor,
S.Rajapandian, S/o.M.Sundar,
No.9-10, Virudhunagar Main Road,
Thirumangalam,
Madurai District - 625 706. ... 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 Assistant Commissioner (CT),
Thirumangalam Assessment Circle,
Commercial Taxes Office, Thirumangalam,
Madurai - 625 706. ... Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for records pertaining to the impugned proceedings of the 2nd respondent in TIN:33905043839/2014-15 (Entry Tax) dated 30.10.2015 and quash the same.

For Petitioner : Mr.Veeramanikandan
For Respondents : Mr.A.Thiyagarajan
Government Advocate

ORDER

The petitioner challenges order dated 30.10.2015 passed in terms of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 [in short 'Entry Tax Act'] for the period 2014-15. The petitioner is a dealer in motorcycles. Admittedly, no returns of entry tax have been filed by it. The assessing authority, based on the monthly returns filed by the petitioner in terms of the Tamil Nadu Value Added Tax Act, 2006, issued notice dated 03.09.2015 proposing to determine the purchase turnover of the vehicles to the best of his judgment and subject the same to tax in terms of Section 3(1) of the Entry Tax Act. He also proposed the levy of penalty at 100% of the entry tax due in terms of Section 15 (1) of the Entry Tax Act.

2. Admittedly, though an opportunity was granted to the

petitioner to file objections, the petitioner had not filed any, which has resulted in the impugned order being passed confirming the proposals made.

3. Though the order of assessment is impugned before me, learned counsel for the petitioner restricts his plea to the set off of Value Added Tax [in short 'VAT'] against the entry tax liable to be paid in terms of Section 4 of the Entry Tax Act. That is so. However, the petitioner has not filed his objections to the assessment proposal when it could have raised the question of set off.

4. Be that as it may, the assessing authority has also granted no opportunity of personal hearing. Balancing the interests of justice, I am thus inclined to remand the matter and set aside the impugned order. Mr.A.Thiyagarajan, appearing for the respondents does not have any serious objection to such remand.

5. The petitioner will appear before the assessing officer on **09.08.2019 [Friday]** at **10.30 a.m.**, and produce all particulars in support of its stand, including the question of set off of VAT as against entry tax liability. No further notice need be issued to the petitioner in this regard. After affording reasonable opportunity of hearing and considering any material that may be filed by the petitioner, orders will be passed *de novo* by the assessing officer, within a period of four weeks from date of conclusion of personal hearing.

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

Sd/-

Assistant Registrar(CS-I)

// True Copy //

Sub Assistant Registrar(CS)

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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 Assistant Commissioner (CT),
Thirumangalam Assessment Circle,
Commercial Taxes Office, Thirumangalam,
Madurai - 625 706.

W.P.(MD)No.2563 of 2016
Dated:22.07.2019

SSS(CO)
TR (08.08.2019) 2P 3C