BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 15.03.2021
CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.3955 of 2017
and W.M.P.(MD)No.3135 of 2017

Tvl.Amman Traders,
Represented by its Proprietor
M.Sivakumar, aged about 47 years,
S/o.Manickavasagam,
No.1-1-1B, Sempatti Road,
Nilakottai,
Dindigul District-624 208. ... 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,
Nilakottai Assessment Circle,
Commercial Taxes Office,
No.1-4-36, B7/1, Periyar Colony,
Madurai Road, Nilakottai,
Dindigul District-624 208. ... 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 second respondent in TIN No.33565302434/2014-15, dated 31.01.2017 and quash the same and to consequently, direct the second respondent to re-do the assessment afresh after giving adequate opportunity to the petitioner.

For Petitioner : Mr.R.Booban
For R1 & R2 : Mr.G.Arjunan
Government Advocate

ORDER

Heard the learned counsel on either side.

2.The petitioner is an assessee registered with the respondent. The case on hand pertains to the assessment year 2014-15. The petitioner's assessment was deemed to have been finalised under Section 22 of TNVAT Act. There was an inspection of the petitioner's place of business by the Enforcement Wing Officials on 22.12.2015. Thereafter, the pre-revision notice was issued on

28.12.2016. The petitioner failed to give his reply. However, without waiting further, the impugned order came to be passed. The same is questioned in this writ petition.

2. It is obvious that the case of the respondent rests on mismatch. In other words, on the basis of cross verification of the petitioner with the Annexure-II filed by the other end dealer, discrepancies were noticed and on that basis, the impugned order was passed. But then, the procedure set out in J.K.M.Graphics Solution Private Limited Case was not followed. No enquiry was conducted with the other end dealer. That apart, the personal hearing was not independently conducted. Only in the pre-revision notice, an offer was given to the petitioner to avail an opportunity of personal hearing. It has been held in the catena of decisions that this is not sufficient. The assessing officer will have to issue a independent personal hearing notice.

3.Therefore, on these two grounds, the order impugned in the writ petition is quashed. The Writ Petition is allowed. The matter is remitted to the file of the second respondent to pass orders afresh in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T & P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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,
Nilakottai Assessment Circle,
Commercial Taxes Office,
No.1-4-36, B7/1, Periyar Colony,
Madurai Road,
Nilakottai,
Dindigul District-624 208.

+1 CC to M/s.B.ROOBAN, Advocate (SR-11358[F] dated 16/03/2021)

+1 CC to M/s.SPL GP (SR-11558[F] dated 16/03/2021)

W.P.(MD)No.3955 of 2017
and
W.M.P.(MD)No.3135 of 2017
15.03.2021

ma(CO)
TR(25.03.2021) 3P 5C