IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.1854 of 2020 &
WMP.Nos.2159 & 2161 of 2020

M/s.Amman Auto Agency
Represented by:Shri. T
Managing Partner
330/9, Salem Main Road
Harur, Salem ...Petitioner

Vs.

The State Tax Officer
Harur Assessment Circle
Salem ...Respondent

Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of certiorari calling for the records on the files of the respondent in TIN 33653342257/2016-17 dated 13.12.2019 and quash the same as being violative of principles of natural justice arbitrary and without jurisdiction and hence invalid and illegal.

For Petitioner : Mr.V.Srikant
For Respondents : Mr.K.Vasanthamala

ORDER

The challenge in this matter is to order of assessment dated 13.12.2019 passed by the State Tax Officer under the provisions of the Tamil Nadu Value

Added Tax Act, 2006 (in short 'Act') for the period 2016-17. After hearing both parties, the following order was passed on 13.09.2022:

> *Heard Mr.V.Srikanth, learned counsel for the petitioner and Mrs.K.Vasanthamala, learned Government Advocate for the respondent/Commercial Taxes Department.*
>
> *2.The petitioner is a authorized dealer for Mahindra Tractors. According to the petitioner, it only sells new tractors and in addition, provides a platform wherein purchases of new tractors could dispose their old tractors to those interested. In relation to this facility, a discount is given which is styled as 'loss of old tractors (discount)'.*
>
> *3.According to the petitioner, this is a modus operandi followed in this business and there is no justification whatsoever for the addition made qua sale of old tractors, insofar as there has been no such sale and no turnover earned in this regard. Perhaps, this difficulty could have been sorted out, had an opportunity of personal hearing being afforded to the petitioner.*
>
> *4.Though such opportunity has been extended in vague and general terms, no personal hearing has been afforded by fixing of date and time which is, in my considered view, the proper method by which personal hearing should be fixed.*
>
> *5.Hence, to remedy this flaw, let the petitioner appear before the Assessing Authority on 23.09.2022 without expecting any further notice. The petitioner shall make his submissions and set forth his explanations in regard to the variations in the impugned assessment order that shall be taken note of by the Assessing Authority and verified. Let a report be filed in this regard.*
>
> *6.List on 18.10.2022 for production of report.*

2. After hearing the petitioner, the respondent authorities has filed a report signed on 23.10.2022 reiterating his findings in the original order that there is evasion of tax. Despite pointed questions, this Court is unable to

appreciate the exact modus oprendi carried out by the petitioner in the transactions of exchange of vehicles.

3. Letter dated 22.07.2019, filed prior to finalization of the impugned assessment, adds fuel to the fire insofar as it refers to compensation paid by the petitioner to the buyer of old tractors and also does not clarify the matter.

4. Learned counsel for the petitioner submits that a detailed submission was made before the authority prior to him having issued report dated 28.10.2020, along with annexures. That report is also unavailable before me to aid in appreciation of the transaction.

5. In such circumstances and in the interest of time seeing as the present assessment relates to the period 2016-17, let the petitioner file an appeal before the appellate authority, who would best positioned to appreciate the transaction and take an appropriate view in the matter.

6. Seeing as the matter is pending disposal before this Court from 2020 onwards, the request of the petitioner to file a statutory appeal is acceded to and time of four weeks' time is granted to the petitioner to file an appeal. If appeal is filed within the period stipulated aforesaid, it shall be taken on file without reference to limitation but subject to all other statutory pre-condition including pre-deposit, heard and disposed expeditiously, in accordance with

law.

7. This writ petition is dismissed with liberty as aforesaid. No costs.

04.11.2022

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Index : Yes/No
Speaking Order

To

The State Tax Officer
Harur Assessment Circle
Salem

DR.ANITA SUMANTH,J.
Ska

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