

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.12.2021

PRONOUNCED ON : 22.04.2022
CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.2991, 2994, 2999, 3001, 3003,
3006 , 12863, 26479, 26768, 27418
& 27419 of 2019
and WMP.Nos.13057, 3270, 3272,
26153, 3266, 3268, 3269, 26875, 25851,
26879 & 3265 of 2019

(Through Video Conferencing)

KOYAS & SONS

REPRESENTED BY ITS PARTNER,
MOHAMED HARIFF,
360, DR.NANJAPPA ROAD,
COIMBATORE.

.. PETITIONER IN

W.P.NOS.2991, 2994, 2999, 3001, 3003,
3006 OF 2019

TVL.DATANG TECHNOLOGIES AND
ENGINEERING INDIA, PRIVATE LIMITED,
KOTHATTAI AN DARIYAGOSHIT VILLAGES,
PARANGIPETTAI POST,CHIDAMBARAM TALUK,
CUDDALORE DISTRICT.

.. PETITIONER IN WP.12863 OF 2019

TVL. G. RAMESH,
S/O. R. GOVINDASAMI,
NO. 150-METTU STREET,
THIRUKZHUKUNDRAM

.. PETITIONER IN WP.26479 OF 2019

TVL.NAMAKKAL TYRES
REP BY ITS PROPRIETOR S. BOOPATHI
NO 10 MUNICIPAL BUILDING,
PARAMATHI ROAD NAMAKKAL- 637001

.. PETITIONER IN WP.NO.26768 OF 2019

M/S.SRI DHANYAA TEXTILES
REP BY ITS PROPRIETOR
MR. DIVYA PRASATH
NO.10/57, S.V.COLONY EAST,
2ND STREET, P.N.ROAD,TIRUPUR- 641605

VS.

THE ASSISTANT COMMISSIONER (ST) (FAC)
DR.NANJAPPA ROAD CIRCLE,
COIMBATORE. ... RESPONDENT IN W.P.NOS.2991, 2994,
2999, 3001, 3003,3006 OF 2019

THE COMMERCIAL TAX OFFICER
CHIDAMBARAM-1,
CUDDALORE DISTRICT. .. RESPONDENT IN WP.12863 OF 2019

ASSISTANT (COMMISIONER)COMMERCIAL (ST),
THIRUKAZHUKUNDRAM ASSESSMENT CIRCLE,
NO. 42,WAHAB NAGAR,
THIRUKAZHUKUNDRAM - 603109
.. RESPONDENT IN WP.NO.26479 OF 2019

THE STATE TAX OFFICER
NAMMAK TOWN ASSESSMENT CIRCLE
NAMAKKAL
.. RESPONDENT IN WP.NO.26768 OF 2019

1 THE STATE TAX OFFICER
LAKSHMI NAGAR, ASSESSMENT
CIRCLE, TIRUPPUR.

2 THE STATE TAX OFFICER (ENF)
GROUP- III, TIRUPPUR.
.. RESPONDENTS IN WP.27418 OF 2019

Prayer in WP 2991 OF 2019:

Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records on the files of the respondent in TIN : 33892140101/2011-12 dated 31.12.2018 and quash the same.

Prayer in WP 2994 OF 2019:

This Writ Petition 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 herein in TIN.33892140101/2012-13 dated 31.12.2018 quashing the same.

Prayer in WP.2999 OF 2019:

This Writ Petition 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 herein in TIN.33892140101/2013-14 dated 31.12.2018 quashing the same.

Prayer in WP 3001 OF 2019:

This Writ Petition 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 herein in TIN.33892140101/2014-15 dated 03.01.2019 quashing the same.

Prayer in WP.3003 OF 2019:

This Writ Petition 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 herein in TIN.33892140101/2015-16 dated 03.01.2019 quashing the same.

Prayer in WP 3006 OF 2019:

This Writ Petition 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 herein in TIN.33892140101/2016-17 dated 03.01.2019 quashing the same.

Prayer in WP 12863 of 2019:

This Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari Calling for the records in respect of the proceedings TIN No.33264442985/2015-16 dated 28.02.2019 of the respondent under the Tamil Nadu Value Added Tax Act 2006 quash the same.

Prayer in WP 26479 OF 2019:

This Writ Petition 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 herein in TIN. 33741601785/ 2009-10 dated 22.05.2019 and quash the same.

Prayer in WP 26768 OF 2019:

This Writ Petition 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 NO 33423122145/2015-16 dated 28.6.19 and quash the same as being

without Jurisdiction and authority of law and contrary to the
Prl of natural justice.

Prayer in WP 27418 OF 2019:

This Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari call for the Impugned Proceedings of the First Respondent in TIN 33222505529/2015-2016 and quash the Impugned order dated 31.7.2019 as passed contrary to the Law laid down by the Honble Madras High Court in the case of M/S.SRI Vinayaga Agencies reported in 60 VST 283 and by the Division Bench of the Madras High court in the Case of State of Tamil Nadu VS Infinite Wholesale Ltd Reported 99 VST 341 and also in violation of the Principles of natural Justice.

Prayer in WP 27419 OF 2019:

This Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari To call for the Impugned Proceedings of the First Respondent in TIN 33222505529/2016-2017 and quash the Impugned order dated 31.7.2019 as passed contrary to the Law laid down by the Honble Madras High Court in the case of M/S.SRI Vinayaga Agencies reported in 60 VST 283 and by the Division Bench of the Madras High court in the Case of State of Tamil Nadu VS Infinite Wholesale Ltd Reported 99 VST 341 and also in violation of the Principles of natural Justice.

For Petitioner : Mr.N.Inbarajan
in W.P.Nos.2991, 2994, 2999, 3001,
3003,3006 of 2019

:M/s.Adithya Reddy in WP.12863 of 2019

:Mr.K.Senguttuvan in WP.26479 of 2019

:Mr.Senniappan in WP.26768/2019
:Mr.P.Raj Kumar in WP.27478,27419 of 2019

For Respondent : Mr.Richardson Wilson
Additional Govt.Pleader.
In W.P.Nos.2991, 2994, 2999,
3001, 3003, 3006 , 26768,
27418 & 27419 of 2019
for M/s.G.Dhana Madhi
Government Advocate
in WP.NOs.12863,26479 of 2019

COMMON ORDER

In these writ petitions, the respective petitioners have challenged the following assessment orders:-

Sl. No.	W.P.No.	Name	Assessment year	Date of Pre Assessment Notice	Reply date	Date of Impugned Order
1	26768/19	Tvl.Namakkal Tyres	2015-16	31.01.2019	02.04.2019	
2	2991/19	M/s.Koyas & Sons	2011-12			31.12.2018
3	2994/19	-do-	2012-13			31.12.2018
4	2999/19	-do-	2013-14			31.12.2018
5	3001/19	-do-	2014-15			03.01.2019
6	3003/19	-do-	2015-16			03.01.2019
7	3006/19	-do-	2016-17			03.01.2019
8	27418/19	M/s.Sri Dhanyaa Textiles	2016-17			31.07.2019
9	27419/19	-do-	2016-17			31.07.2019
10	26479/19	G.Ramesh	2009-10 & 2010-11			09.01.2017
11	12863/19	M/s.Datang Technologies and Engineering India	2015-16			28.02.2019

2. W.P.No. 26768 of 2019 has been filed by Messrs. Namakkal Tyres. The petitioner has challenged impugned dated 28.6.2019. By the impugned order dated 28.6.2019, the respondent has confirmed the demand proposed in a show cause notice dated 31.1.2019.

3. The petitioner had failed to file Form WW even though the petitioner's turnover exceeded rupees one crore during the assessment year 2015-16 under Section 63 A of the of the Tamil Nadu Value Added Tax Act, 2006.

4. The challenge to the impugned order is primarily on the ground that no personal hearing was granted to the petitioner before the impugned order dated 28.6.2019 was passed.

5. It is therefore submitted that the impugned order has to go and therefore be quashed and the case be remitted back to the respondent for passing a fresh order after affording an opportunity of being heard.

6. The petition is resisted primarily on the ground that the petitioner was indeed given an opportunity of being heard and that the petitioner's authorised representative namely one Thiru S.Eswaran had indeed appeared for a personal hearing on 02.04.2019 and it is only thereafter impugned order has been passed. It is therefore submitted that the writ petition is liable to be dismissed.

7. W.P.No. 26479 of 2019 has been filed by TVL G.Ramesh. The petitioner has challenged impugned order dated 22.5.2019 for the assessment year 2009 to 2010. Earlier, the petitioner had suffered assessment order dated 15.06.2015 for the assessment year 2010 to 2011. The petitioner preferred an appeal before the Appellate Deputy Commissioner who by an order dated 1.6.2016 to set aside the assessment order dated 30.06.2012 remanded the case back to the respondent. Pursuant to the aforesaid order, the petitioner was issued vide a notice dated 02.11.2016.

8. Meanwhile, the petitioner requested for finalising the assessment for the assessment year 2010-2011 vide letter dated 21.11.2016. The petitioner had stated that nearly 4% on the turnover was based on a clarification issued by the Commissioner (C.T) vide letter dated 19.9.2007 which stated that sales to Government Department attracted only 4% tax.

9. It is submitted that the said contention of the petitioner was also accepted vide assessment order dated 09.01.2017 for the assessment year 2010 to 2011. After the assessment was completed for the assessment year 2010 to 2011, a fresh notice was issued to revise the assessment order for the assessment year 2009 to 2010 by proposing to pay levy tax at 12.5% and for the reversal of ITC along with penalty.

10. Thereafter a string of communications were exchanged between the petitioner and the respondent Department. On 20.02.2019, a summons was issued to the petitioner to produce documents. The petitioner replied on 27.02.2019 to the notice issued on 20.04.2018 purportedly enclosing copies of delivery register which was signed by the officers under the Chengalpattu Assessment Circle acknowledging receipt of monthly returns.

11. This has culminated in the assessment order dated 22.05.2019 for the Assessment Year 2009 to 2010. It is the month of the petitioner that the assessment order may passed for the assessment year 2009-10 was without reference to the assessment order passed for the assessment year 2010-11 and without an opportunity of being heard.

12. Under these circumstances, the petitioner filed an application for rectification of the order dated 22.05.2009 on 20.07.2019 under Section 84 of the TNVAT Act, 2006. Thereafter, on 27.02.2019 the petitioner sent a reply stating that the petitioner had already filed returns on the due date. It is submitted that the petitioner filed returns for April, 2009 to March, 2010 with a delay of 12 months for ITC shall under section 19(11). However, by an order dated 24.7.2019, the said application for rectification of the order dated 24.07.2019 was rejected.

13. On 22.08.2019, the respondent has issued notice to demanding payment of money within two days failing which proceedings to be initiated to recover the amount as confirmed the order dated 22.05.2019.

14. The Writ petition is resisted on the ground that the petitioner has alternate remedy by way of an appeal. Therefore, the writ petition is liable to be dismissed. It is further submitted that the petitioner requested two months time vide letter dated 3.9.2018 and thereafter on 15.12.2018 to reply to notice dated 20.04.2018.

15. It is submitted that the last day for reversal of ITC expired on 30.6.2012 and there was a belated reversal. It is further submitted that even the delivery register produced by the petitioner shows the date as 16.04.2012.

16. It is submitted that as long as petitioner notice was issued there was sufficient compliance to the principles of natural justice. It is submitted that it is not mandatory for an opportunity of being heard before passing in the assessment order.

17. W.P.No.12863 of 2019 has been filed by M/s.Datang Technologies & Engineering India. The petitioner has challenged the impugned order dated 28.02.2019 for the assessment year 2015 to 2016.

18. It is the case of the petitioner that the petitioner is engaged in the business of construction, commission and erection of power plant for its customers.

19. It is submitted that the Enforcement Wing the petitioners visited its place of business on 29.11.2016 and inspected records. The case of the petitioner is that the impugned order has been passed in gross violation of principles of natural justice inasmuch as the petitioner was not heard

20. On merits it is submitted that the department cannot levy tax on the supply of services on which service tax is payable by the petitioner. It is submitted that to that extent there was exempted turnover. It was not to be taxed in the hands of the petitioner under the provisions of the Tamil Nadu Value Added Tax Act, 2006.

21. On behalf of the respondents, it was submitted that an omission was noticed on the part of the petitioner to correctly declare the purchase details with a view to evade tax.

22. It is further submitted that the petitioner has not produced the proof from the sub-contractor for the contract amount which was reported by the sub-contractor in the monthly returns in Form-1 filed for the assessment year 2015 to 2016. It is submitted that in absence of any proof for the assessment of subcontractor, exemption was to be disallowed and therefore they were assessed at the appropriate rate of tax as per section 8 (5) (c) of the Tamil Nadu Value Added Tax Act, 2006.

23. Apart from making several other submissions on the merits it was submitted that the impugned order was well reasoned and requires no interference.

24. It is submitted that Section 22(2) of Tamil nadu Value Added Tax Act, 2006 reads as follows:

" the Assessing authority shall accept the return submitted for the year by the dealer , if the returns are in the prescribed form and accompanied with the prescribed documents and proof of payment of tax. Every such dealer shall be deemed to have been assessed for the year on 31st day of October of the succeeding year".

25. Actually assessment was not made, it had been treated as deemed to have been assessed. The defects omission and irregularities were noticed, consequent on the surprise inspection conducted on 29.11.2016.

26. After getting the result of inspection, the suppressed turnovers were brought to assessment under Section 27 which empowers to make assessment on escaped turnover. The repeal and saving clause under the Tamil Nadu Goods and Services Tax Act, 2017 empowers the Assessing Officer to complete the assessments pending under the Tamil Nadu Value Added Tax Act, 2006. There is no impediment for the respondent to pass the Assessment order even though the TNVAT Act is repealed.

27. It is further submitted that there is no flaw while passing the impugned order TNVAT Act, 2006. Section 29(d) of TNVAT, Act, 2006 provide that " if the return submitted by a dealer under clause (a) appears to be incorrect or incomplete the assessing authority shall, after making such enquiry, as it may consider necessary and after taking into account all relevant materials gathered by it, assess the dealer to the best of its Judgment".

28. It is further submitted that under Section 27(1)(a) of TNVAT Act is as follows: "Where for, any reason, the whole or any part of the turnover of business has escaped assessment to tax, the assessing authority may, subject to the provisions of sub-Section (3) at any time within a period of six years from the date of assessment determine to the best of its judgment the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquires as is may consider necessary". It is submitted that there was no violation of any provisions of law as contended by the petitioner.

29. W.P.Nos. 2991, 2994, 2999, 3001, 3003 and 3006 of 2019 has been filed by Messrs Koya& Son's. In these writ petitions, the petitioner has challenged the respective assessment orders all dated 31.12.2018 for the assessment years 2011-2012 to 2016-2017. It is the case of the petitioner that the officers of enforcement Wing visited the place of business of the petitioner on 19.04.2017 and verified the records for the assessment years. Relying on the proposals received from the office of the enforcement Wing in VS I-3 dated 22.02.2018, notice dated 04.05.2018 were issued to the petitioner for revising the assessment in the returns filed by the petitioner.

30. It is submitted that the assessments were deemed to have been completed in terms of section 22 of the Tamil Nadu Value Added Tax Act, 2006.

31. It is submitted that no verification was independently carried out by the respondent before issuing the notice for revising the self- assessment in the returns filed by the petitioner. It is submitted that based on the proposals received it was alleged that there were (a) purchase omission and (b) sales omission which were not reflected in the returns filed by the petitioner.

32. As far as purchase omission is concerned, it was stated that the petitioner had failed to include the import purchases and interstate purchases and the corresponding sale within the State. It is submitted that it was therefore to be assumed that there was a purchase omission and a proposal for estimated sales was made after adding gross profit.

33. With regard to sales omission, no details were verified to come to a conclusion that there was difference and therefore petitioner was liable to pay tax at 14.5%. It is further submitted that despite the petitioner filing an objection on 12.06.2018 along with copies of the returns in form-one with annexure and consolidated statements of inter-State, intra-State and import purchases the impugned orders have been passed. It is therefore submitted that these orders are liable to be quashed.

34. It is further submitted that without providing further opportunity to the petitioner to produce further details, the impugned order has been passed. It is further submitted that petitioner was also not called upon to produce audited balance sheet and profit and loss account.

35. However, for the first time such deficiency has been pointed out in the impugned orders. It is submitted that the respondents have also not attempted to reconcile the statements. It is submitted that if personal hearing was granted, the petitioner would have been in a position to explain the case to the respondent. It is therefore submitted that the impugned orders have been passed in gross violation of principles of natural justice. It is appropriate that the petitioner be allowed.

36. Opposing the prayer in these writ petition, the learned counsel for the respondent submits that the petitioner has an alternate efficacious remedy by way of an appeal and therefore the present writ petition is liable to be dismissed. That apart it is submitted that sufficient time was given to the petitioner to produce documents. It is submitted that the petitioner has sought for only for 3 weeks time vide letter dated 23.05.2018.

37. It is submitted that the documents were filed on

12.06.2018. However, the petitioner failed to file audited balance for all these years. It is submitted that when the account documents are to be produced, it has to be audited balance sheet and profit and loss account.

38. WP.No. 27418 and 27419 of 2019 has been filed by Messer Sri DhanyaaTextiles. The petitioner has challenged impugned assessment orders both dated 31.07.2019 for the assessment years 2015-2016 and 2016-2017. The petitioner is a manufacturer of hosiery and garments. There was an inspection by the enforcement Wing of the commercial tax department on 29.08.2016.

39. It was found that the petitioner had purchased cotton from bill traders for a value of Rs.1,99,44,340/- during the assessment year 2015-2016 and for a sum of Rs.1,17,97,939/- during the assessment year 2016-2017 and availed input tax credit on such purchases for a sum of Rs.9,82,217/- and Rs.5,89,870/- during the respective assessment years.

40. The Enforcement Wing of the Commercial Tax Department found that there was no movement of goods and therefore based on the same notices were issued to the petitioner on 29.10.2018. The petitioner also replied to the same 12.12.2018 and also filed written submissions on 21.01.2019.

41. Thereafter, the petitioner also filed a final reply to the respective notices on 25.01.2019 and requested for a personal hearing. However, without granting personal hearing the impugned orders both dated 31.07.2019 has been passed.

42. The writ petition is resisted and the impugned orders are defended by the respondent on the ground that an opportunity of personal hearing was given on 21.1.2019 in terms of personal hearing notice dated 31.12.2018. It is submitted that the petitioner has suppressed this fact in this writ petition.

43. It is further submitted that sufficient time was granted to the petitioner to furnish the documents as was requested which was also granted. It is therefore submitted that the petition is therefore liable to be dismissed by directing the petitioner to file a statutory appeal before the appellate authority.

44. The learned counsels for the petitioners submitted that the learned Single Judge while passing an order dated 01.08.2019 in the case of State Bank of India Officer's Association (CC) - SBIOA Vs. The Assistant Commissioner (ST), Chennai - 600 001 in W.P.No.22634 of 2019 had not considered the several decisions of the Division Bench of this Court, wherein, the Court after examining the provisions of the Tamil Nadu General Sales Tax Act

(hereinafter referred to as "TNGST Act"), 1959 and also the provision of the Tamil Nadu Value Added Tax Act (hereinafter referred to as "TNVAT Act"), 2006, particularly Section 22(2) of the TNGST Act and Section 27 of the TNVAT Act.

45. In these Writ Petitions, a reference was made to the following cases:-

" i. SRC Projects Private Limited Vs. Commissioner of Commercial Taxes, Chennai and another, (2010) 33 VST 333 (Mad).

ii. Shri Mariammal Fire Works Vs. Commissioner of Commercial Taxes, Chepauk, Chennai and another, (2011) 38 VST 345 (Mad).

iii. M/s.Delphi Automative Systems P. Ltd. Vs. The Assistant Commissioner (CT), Chennai - 600 044, order dated 29.01.2018 of the Division Bench of this Court in W.A.No.173 of 2018.

iv. G.V.Cotton Mills (P) Ltd. Vs. The Assistant Commissioner (CT), Coimbatore - 641 018, order dated 16.03.2018 of the Division Bench of this Court in W.A.Nos.234 to 240 of 2015.

v. M/s.Dhanvijay Textiles (P) Ltd. Vs. The Assistant Commissioner (CT) (FAC), Mettupalayam, order dated 02.04.2018 of the Division Bench of this Court in W.A.Nos.677 to 681 of 2018."

46. The learned counsel for the petitioners also drawn attention to the decisions of the Hon'ble Supreme Court in Sahara India (Firm), Lucknow Vs. Commissioner of Income Tax, Central-I and others, (2008) 14 SCC 151 and in Kesar Enterprises Ltd. Vs. State of U.P. and others, (2011) 13 SCC 733.

47. It is therefore submitted that though a different view was taken by the learned Single Judge in the case of State Bank of India Officer's Association (CC) - SBIOA Vs. The Assistant Commissioner (ST), Chennai - 600 001 in W.P.No.22634 of 2019, it has been confirmed by the Division Bench of this Court in W.A.No.4073 of 2019. The judicial discipline would be require the matter to be adjudicated that the decision of the Division Bench of this Court ought to have been followed. It is submitted that perhaps the learned Single Judge has not been drawn attention to the above decision of the Division Bench of this Court and therefore different view has been taken.

48. It is therefore submitted that the case of the petitioners falls within the exceptions recognised by the Hon'ble Supreme Court for entertaining the writ petitions inasmuch as there are gross, breach and violation in principles

of natural justice. In most of the cases, the petitioners, who had filed reply, request for personal hearing and therefore, the impugned orders are liable to be set aside as the impugned orders have to be decided on merits in well settled law.

49. Opposing the Writ Petitions, the learned Additional Government Pleader submits that in all these cases, adequate opportunity were given to the petitioners to reply to the show cause notice and in some of the cases, the benefit of personal hearing was also extended and therefore, it cannot be said that there was violation of principles of natural justice. It is therefore submitted that the petitioners have to work out their remedy before the Appellate Commissioner.

50. As far as the petitioners in Writ petitions at Sl.Nos.2 to 7 who did not reply to the Show Cause Notices / Notices issued under Section 27 of the TNVAT Act, 2006 are concerned, a specific reference was made to the decision of the Division Bench of this Court in G.V.Cotton Mills (P) Ltd. Vs. The Assistant Commissioner (CT), Coimbatore 641 018, referred to supra, wherein, it was observed that even if objection was not given, still the assessing authority was expected to post the matter for hearing by issuing notice to the assessee.

51. The learned counsel also relied on the decision of the Hon'ble Supreme Court in Swami Devi Dayal Hospital and Dental College Vs. The Union of India and others, (2013) 10 Scale 608, wherein, the Hon'ble Supreme Court re-affirmed the view that even in the absence of a specific provision of giving hearing, the hearing is required in such cases, unless specifically excluded by a statutory provision.

52. The learned counsel for the petitioner reiterated that the Circular dated 24.02.2021 issued by the Principal Secretary / Commissioner of Commercial Taxes, Chepauk, Chennai - 600 005 in the context of TNVAT Act, 2006 would still survive in the light of Section 88(3)(i) of the TNVAT Act, 2006. It is submitted that notwithstanding the repeal of TNGST Act, 1959 and Tamil Nadu Additional Sales Tax Act, 1970 with the enactment of TNVAT Act, 2006, it is clear that under Section 88(3)(i) of the Act, 2006 all rules, regulations, notifications, clarifications or orders made or issued under any of the provisions of the said Act or 1970 Act, as the case may be, shall continue to remain in force on the date immediately before the commencement of the Act, 2006 on or after insofar as they are not inconsistent with the provisions of this Act 2006 or the rules made thereunder until they are repealed or amended.

53. Therefore, it was incumbent on the part of the respondents to have extended the benefit of personal hearing to

the petitioners. Not only those petitioners who had failed to reply and sought for adjournment but also those petitioners who failed to file reply should have been served with a notice of personal hearing for re-assessment under Section 27 of the TNVAT Act, 2017.

54. In so far as W.P.No.26768 of 2019 [Tvl.Namakkal Tyres] is concerned, it is the submission of the respondent that physical hearing was provided to the petitioner and that the letter of the petitioner merely states that if any other documents are required, the respondent may call upon the authorized representative of the petitioner and therefore, it cannot be said that no physical hearing was held on 02.04.2019.

55. As far as W.P.Nos.2991, 2994, 2999, 3001, 3003 & 3006 of 2019 [Koyas & sons], it is submitted that sufficient opportunity was given to give reply and to produce the documents and that the petitioner had sought time for three weeks vide letter dated 23.05.2018 which was given, but they filed their objections only on 12.06.2018. It is submitted that the petitioner however failed to produce any record proofs like audited balance sheets, profit and loss accounts for all these years and the assessment orders were passed only six months thereafter. Therefore, it is submitted that it cannot be said that reasonable opportunity to show cause as is contemplated under proviso to Section 27 (1) & (2) of the Act have been violated.

56. In the case of M/s.Sri Dhanyaa Textiles [W.P.Nos.27418 & 27419 of 2019], it is submitted that the petitioner was given an opportunity of personal hearing on 31.12.2018 and that hearing was fixed on 21.01.2019 which fact has been suppressed by the petitioner.

57. As far as M/s.P.Dhanya Textiles in W.P.No.26479 of 2019 the second writ petition of the same petitioner is concerned, it is submitted that for the assessment year 2009-2010, the respondent had issued a show cause notice/notice dated 20.04.2018 which was hand delivered on 25.04.2018 and another notice was issued on 09.09.2018 which was delivered by RPAD on 19.09.2018. It was submitted that the petitioner has not filed the required returns within the time stipulated and therefore on merits, there is no case made out.

58. As far as W.P.No.12863 of 2019 [Tvl.Datang Technologies] is concerned, it is submitted that personal hearing was given and an order was passed after extending the benefit of personal hearing.

59. As far as the law is concerned, the learned Additional Government Pleader for the respondent submits that there is

distinction between the proceedings under Section 22(4) of TNVAT Act, 2006 and the proceedings under proviso to Section 27 (1) & (2) of the Act. It is submitted that in the former, it is mandatory that personal hearing should be extended whereas in the later, a reasonable opportunity to show cause is sufficient.

60. In this connection, the learned counsel for the respondent drew attention to the interpretation of the Hon'ble Supreme Court in Uttar Pradesh Government v. Sabir Hussain reported in (1975) 4 SCC 703, wherein the Hon'ble Supreme Court held that in the context of Section 240(3) of the Government of India Act, 1935, the expression could only mean a reasonable opportunity to show cause against the action proposed to be taken against and that the non-supply of copies of relied Upon Documents would have caused serious prejudice in making the proper representation. It is submitted that in this case, the petitioner had been supplied with the notice and were also given an opportunity to reply and it is sufficient if the parties are allowed to make written submissions.

61. The learned Additional Government Pleader for the respondents relied upon the decision of the Hon'ble Supreme Court in the case of Madhya Pradesh Industries Ltd v. Union of India and Others reported in AIR 1966 SC 671, wherein at paragraph 10, it has been held as follows:

"10.As regards the second contention, I do not think- that the appellant is entitled as of right to a personal hearing. It is no doubt a principle of natural justice that a quasi-judicial tribunal cannot make any decision adverse to a party without giving him an effective opportunity of meeting any relevant allegations against him. Indeed, r. 55 of the Rules, quoted supra, recognize the said principle and states that no order shall be passed against any applicant unless he has been given an opportunity to make his representations against the comments, if any, received from the State Government or other authority. The said opportunity need not necessarily be by personal hearing. It can be by written representation. Whether the said opportunity should be by written representation or by personal hearing depends upon the facts of each case and ordinarily it

is in the discretion of the tribunal. The facts of the present case disclose that a written representation would effectively meet the requirements of the principles of natural justice. But there is some apparent justification in the submission that the Central Government had taken into consideration an extraneous matter that came into existence subsequent to the filing of the revision, namely, that Messrs. Manganese Ore (India) Ltd., which is a public sector undertaking, had applied for the lease of the area in question on October 5, 1962, for the purpose of mining. The appellant did not allege in its affidavit that this fact was not brought to its notice before the Central Government made the order; indeed, it did not file any reply affidavit to the effect that the said matter was kept back from it. I would have pursued the matter a little further but for the fact that I am refusing to interfere in this appeal on other grounds."

62. The learned Additional Government Pleader for the respondents further submits that this view has been followed by the High Court of Andhra Pradesh in *M. Sadasiva Sekhar v. District Collector, Kurnool and Others* reported in 2003 SCC OnLine AP 260 in the context of Control Order under the provisions of Essential Commodities Act, 1955. In this context, a specific reference was made to paragraph 14 of the said order which reads as under:

"14. WHETHER personal hearing is part of natural justice in all circumstances? The two principal modes of hearing are oral or personal before the adjudicatory authority and the other is hearing by way of a written representation. It is no doubt true that oral personal hearing is more fruitful to the affected person for he can effectively persuade the authorities to countenance his view. However, in all situations, oral personal hearing is not compulsory. An opportunity of making a representation is equally efficacious. It also amounts to hearing. However, it must be clarified that where provision of law or a rule specifically

provides that oral personal hearing should be afforded, strict compliance is required, and as the law exists, ordinarily not affording oral personal hearing could itself prejudice the person and render the order invalid or ineffective. A reference may be made to M. P. Industries Ltd. v. Union of India, union of India v. Jyoti Prakash, Indru ramchand Bharvani v. Union of India."

63. The learned Additional Government Pleader for the respondents finally submitted that the order of the learned Single Judge in State Bank of India Officer's Association (CC) - SBIOA v. The Assistant Commissioner (ST) in W.P.No.22634 of 2019, dated 01.08.2019 has specifically compared the provisos of Sections 22 & 24 of the TNVAT Act and also the two circulars cited by the petitioners and has come to the conclusion that it is sufficient if the dealers are allowed to give a reply to the notice and therefore, in the light of the above decision of this Court, which has been affirmed by the Division Bench by its order dated 06.12.2019 made in W.A.No.4073 of 2019, the Writ Petitions filed by the petitioners are liable to be dismissed.

64. The learned Additional Government Pleader for the respondents has also attempted to distinguish the decisions cited by the learned counsel for the petitioners, particularly that of the decision of the Division Bench of this Court referred to supra.

65. It is submitted that the lead case relied on by the learned counsel for the petitioners in SRC Projects Private Limited v. Commissioner of Commercial Taxes, Chennai and another reported in (2010) 33 VST 333 (Mad) was rendered in the context of Section 16(1)(a) of TNGST Act, 1959 which is para materia with Section 27 of TNVAT Act, 2006. However, while holding that hearing has to be given, the Court has relied on 2001 circular dated 20.04.2001 of the Special Commissioner/Commissioner of Commercial Taxes [FAC] vide clarification bearing reference no.Acts Cell - VI/13234/2001.

66. It is submitted that the above circular was issued in the context of Section 22(2) of TNGST Act and the circular

merely reiterates the provisions under Section 22(2) of the TNGST Act, 1959 which is again para materia with Section 40(2) of TNVAT Act, 2006 and therefore, it cannot be said that the decision of the Division Bench in SRC Projects Private Limited v. Commissioner of Commercial Taxes, Chennai and another, reported in (2010) 33 VST 333 (Mad) is binding on this Court, particularly in the light of the fact that there is no clear discussion in the context of Section 16 of TNGST Act, 2006.

67. The other decisions of the Division Bench were also sought to be distinguished by the learned Additional Government Pleader for the respondent on the ground that the Courts have followed the views in SRC Projects Private Limited referred to supra and in the case of G.V.Cotton Mills (P) Ltd vide order dated 16.03.2018 made in W.A.Nos.234 to 240 of 2015.

68. The Court has only followed the views in Swami Devi Dayal Hospital and Dental College v. The Union of India and Others reported in (2013) 10 Scale 608, wherein it was held as follows:

"21.It is trite that even in the absence of specific provision of giving hearing, the hearing is required in such cases unless specifically excluded by a statutory provision. In such a situation the proviso to sub-section (4) of Section 10 A has to be liberally construed to encompass the cases of renewal of permission as well."

69. By way of rejoinder, the learned counsel for the petitioners submits that the decision of the learned Single Judge has to be held to be "per incuriam" as this decision have not considered the earlier views of the Division Bench of this Court and judicial discipline would have required the Court to follow the earlier decisions.

70. Mr.Rajkumar, learned counsel for the petitioner in W.P.No.27418 of 2019 also stressed the point that Section 22(4) deals with the situation where no returns are filed by the dealer for any period or if the return filed is incomplete or incorrect or is not accompanied with any of the document prescribed under the rules of payment of tax, the Assessing Authority shall after making such enquiry as it may consider necessary assess the dealer to the best of his judgment subject to such conditions as may be prescribed after completion of that year. It is submitted that same exercises is sought to be made

while exercising jurisdiction under Section 27 of TNVAT Act, except that the period for invoking Section 27 is beyond a year for which the assessment pertain to. It is therefore submitted that if the assessment was to be made on best judgment for reopening the assessment at the end of the year for the first time, same yardstick should be followed when Section 27 of TNVAT Act is invoked.

71. It is further submitted that unless the documents are scrutinised by the officer and explained in personal hearing, the Assessing officer cannot pass an assessment order particularly when complicated issues relating to the transactions are involved and therefore submits that the writ petitions may be allowed by quashing the impugned orders.

72. I have considered the arguments advanced by the learned counsel for the respective petitioners and the learned counsel for the respondent. In all these cases, the impugned assessment orders have been passed without granting an opportunity of hearing.

73. For a proper appreciation, I shall refer to few of the provisions from the erstwhile TNGST Act, 1959 and compare them with provisions of TNVAT Act, 2006. Section 24 of the Tamil Nadu Value Added Tax Act, 2006 and Section 12A of the Tamil Nadu General Sales Tax Act, 1959 are pari materia. Similarly Section 12 of TNGST Act, 1959 is similar to Section 12 of TNVAT Act, 2006 for a comparison they are reproduced below:-

Section 12 of the TNGST Act, 1959	Section 22 of the TNVAT Act, 2006
Procedure to be followed by the assessing authority: - (1)(a) The assessment in respect of a dealer shall be on the basis of the return relating to his turnover submitted in the prescribed manner within the prescribed period: (1)(b) Notwithstanding anything contained in clause (a) of this sub-section, a dealer whose turnover which includes the total turnover under this Act, inter-State sales, export sales and stock transfers to outside the State does not exceed ten crores of rupees in a year, may make a self-assessment for that year in the manner and subject to such conditions as may be prescribed. (1)(c) The provisions of clause (b) and sub-section (1-A) shall apply to the assessments for the financial years commencing from the 1st day of April 2001. (aa) The provisions of clause (a) and sub-section (1-A) shall apply to the assessments for the financial years, commencing on the 1st day of April 1999.]) (b) [...]	Procedure to be followed by Assessing Authority: (1) The assessment in respect of the dealer shall be on the basis of return relating to his turnover submitted in the prescribed manner within the prescribed period. (2) The assessing authority shall accept the returns submitted for the year, by the dealer, if the returns are in the prescribed form and accompanied with the prescribed documents and proof of payment of tax. Every such dealer shall be deemed to have been assessed for the year on the 31st day of October of the succeeding year Provided that in respect of such returns submitted for the years 2006-2007, 2007-2008, 2008-2009, 2009-2010 and 2010-2011, on which assessment order are not passed shall be deemed to have been assessed on the 30th day of June 2012. (3) Notwithstanding anything contained in sub-section (2), not exceeding twenty per cent of the total number of such assessments shall be selected by the Commissioner in such manner as may be prescribed for the purpose of detailed scrutiny regarding the correctness of the returns submitted by the dealer and, in such cases, revision of assessment shall be made wherever necessary. (4) If no return is submitted by the dealer for that year, the assessing authority shall, after making such enquiry as it may consider necessary, assess the dealer to the best of its judgment, subject to such conditions as may be prescribed: Provided that before taking action under this sub-section, the dealer shall be given a reasonable opportunity of being heard. 22(5) In addition to the tax assessed under sub-section (4), the assessing authority shall, in the same order of assessment passed under sub-section (4) the assessing authority shall, in the same order of assessment passed under sub-section (4) or by a separate order, direct the dealer to pay by way of penalty, a sum which shall be, in the case of failure to submit return, one hundred and fifty per cent of the tax assessed: provided that no penalty under this sub-section shall be imposed after the period of five years from the date of assessment order under this section and unless the dealer affected has had a reasonable opportunity of showing cause against such imposition.

74. Before substitution, Sub-section (2), the assessing authority shall accept the returns submitted for the year by the dealer, if the returns are accompanied by the proof of payment of tax and the documents prescribed and on such acceptance, the assessing authority shall pass an assessment order.

Section 12 A of the TNGST Act, 1959	Section 24 of the TNVAT Act, 2006
12-A. Assessment of sales shown in accounts at low prices. - (1) If the assessing authority is satisfied that a dealer has, with a view to evade the payment of tax, shown in his accounts, sales or purchases of any goods, at prices which are abnormally low compared to the prevailing market price of such goods, it may, at any time within a period of five years from the expiry of the year to which the tax relates, assess or reassess the dealer to the best of its judgement on the turnover of such sales or purchases after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such assessment. Section 12-A(2) The provisions of sub-sections (2) to (5) of section 16, shall, as far as may be, apply to assessment or reassessment under sub-section (1) as they apply to reassessment of escaped turnover under sub-section (1) of section 16.	24. Assessment of sales shown in accounts at low prices.-- (1) If the assessing authority is satisfied that a dealer has, with a view to evade the payment of tax, shown in his accounts, sales or purchases of any goods, at prices which are abnormally low compared to the prevailing market price of such goods, it may, at any time within a period of * [five] Six years from the expiry of the year to which the tax relates, assess or reassess the dealer to the best of its judgement on the turnover of such sales or purchases after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such assessment. (2) The provisions of sub-sections (3) to (8) of section 27, shall, as far as may be, apply to assessment or re-assessment under Sub-Section (1) as they apply to the re-assessment of escaped turnover under Sub-section (1) of Section 27.

75. Similarly , Section 16 of the TNGST Act, 1959 is pari material with Section 27 of the TNVAT Act, 2006, reads as under:-

Section 16 of the TNGST Act, 1959	Section 27 of the TNVAT Act, 2006
Section 16. Assessment of escaped turnover. - (1) (a) Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of sub-section (2), at any time within a period of five years from the * [date of order of the final assessment by the assessing authority], determine to the best of its judgement the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such assessment.	27. Assessment of escaped turnover and wrong availment of input tax credit (1) (a) Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of sub-section (3), at any time within a period of 1[six years from the date of assessment], determine to the best of its judgment the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary. (b) Where, for any reason, the whole or any part of the turnover of business of a dealer has been assessed at a rate lower than the rate at which it is assessable, the assessing authority may, at any time within a period of 2[six years from the date of assesment], reassess the tax due after making such enquiry as it may consider necessary. (2) Where, for any reason, the input tax credit has been availed wrongly or where any dealer produces false bills, vouchers, declaration certificate or any other documents with a view to support his claim of input tax credit or refund, the assessing authority shall, at any time, within a period of 2[six years from the date of assessment], reverse input tax credit availed and determine the tax due after making such a enquiry, as it may consider necessary:

Section 16 of the TNGST Act,
1959

Section 27 of the TNVAT
Act, 2006

Provided that no order shall be passed under sub-sections (1) and (2) without giving the dealer a reasonable opportunity to show cause against such order.

(3) In making an assessment under clause (a) of sub-section (1), the assessing authority may, if it is satisfied that the escape from the assessment is due to wilful non-disclosure of assessable turnover by the dealer, direct the dealer, to pay, in addition to the tax assessed under clause (a) of sub-section (1), by way of penalty a sum which shall be -

(a) fifty per cent of the tax due on the turnover that was wilfully not disclosed if the tax due on such turnover is not more than ten per cent of the tax paid as per the return;

(b) one hundred per cent of the tax due on the turnover that was willfully not disclosed if the tax due on such turnover is more than ten per cent but not more than fifty per cent of the tax paid as per the return.

(c) one hundred and fifty per cent of the tax due on the assessable turnover that was willfully not disclosed, if the tax due on such turnover is more than fifty per cent of the tax paid as per the return;

(4) in addition to the tax determined under sub-section (2), the assessing authority shall direct the dealer to pay as penalty a sum *[which shall be three hundred percent of the tax due in respect of such claim;] *omitted

Section 16 of the TNGST Act, 1959	Section 27 of the TNVAT Act, 2006 [(i) which shall be in the case of first such detection fifty per cent of the tax due in respect of such claim; and (ii) which shall be in the case of second or subsequent detections, one hundred per cent of the tax due in respect of such claim:] omitted* Provided that no penalty shall be levied without giving the (5) The powers under sub-sections (1) and (2) may be exercised by the assessing authorities even though the original order of assessment, if any, passed in the matter has been the subject matter of an appeal or revision. (6) In computing the period of limitation for assessment or re-assessment under this section, the time during which the proceedings for assessment or re-assessment remained stayed under the orders of a Civil Court or other competent authority shall be excluded. (7) In computing the period of limitation for assessment or re-assessment under this section, the time during which any appeal or other proceeding in respect of any other assessment or reassessment is pending before the High Court or the Supreme Court involving a question of law having a direct bearing on the assessment or re-assessment in question, shall be excluded. (8) In computing the period of limitation for assessment or re-assessment under this section, the time during which any appeal or proceeding in respect of any assessment or re-assessment of the same or part of the turnover made under any other enactment was pending before any appellate or revisional authority or the High Court or the Supreme Court shall be excluded.
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76. Section 12(B) of the TNGST Act, is pari materia with Section 25 of the TNVAT Act, 2006.

Section 12(B) of the TNGST Act, 1959	Section 25 of the TNVAT Act, 2006
Section 12-B.: Assessment of sales in certain cases. - (1) Notwithstanding anything contained in this Act but subject to the provisions of section 16, the assessment of a dealer in respect of the assessment for the period prior to the 1st day of April 1999 shall be on the basis of the return relating to his turnover and on the basis of the declaration or certificate furnished on or before the 30th day of September 2002 and such return shall be accepted subject to such conditions as may be prescribed. Provided that this sub-section shall not apply to a dealer who has filed an appeal or other proceeding in respect of any assessment for the period referred to in this subsection and is pending before the Special Tribunal, the High Court or the Supreme Court , as the case me.	25. Procedure to be followed in assessment of certain cases.-(1) If any dealer who is liable to pay tax under this act fails to submit return within the prescribed period, or if the return submitted by him appears to be assessing authority to be incomplete or incorrect, the assessing authority may, after making such enquires as it considers necessary, determined provisionally the tax payable by the dealer to the best of its judgment.

77. Section 22 of the TNVAT Act, 2006 gets triggered under a different circumstances. It deals with the Deemed Assessment and Procedure to be followed by Assessing Authority. As per Sub - Section (1) to Section 22 of the TNVAT Act, 2006, the assessment in respect of the dealer shall be on the basis of return relating to his turnover submitted in the prescribed manner within the prescribed period.

78. As indicated above, Sub-Section (2) to Section 22 of the Act has been amended with effect from 19.06.2012. Before substitution, Sub-section (2) read as follows:-

"(2) The assessing authority shall accept the returns submitted for the year, by the dealer, if the returns are accompanied by the proof of payment of tax and the documents prescribed, and on such acceptance, the assessing authority shall pass an assessment order."

79. Amended Sub-Section (2) to Section 22 of the Act reads as under:-

“(2) The assessing authority shall accept the returns submitted for the year, by the dealer, if the returns are in the prescribed form and accompanied with the prescribed documents and proof of payment of tax. Every such dealer shall be deemed to have been assessed for the year on the 31st day of October of the succeeding year -

Provided that in respect of such returns submitted for the years 2006-2007, 2007-2008, 2008- 2009, 2009-2010 and 2010-2011, on which assessment order are not passed shall be deemed to have been assessed on the 30th day of June 2012.”

80. As per Sub-Section (3) to Section 22 of the Act, notwithstanding anything contained in sub-section (2), not exceeding twenty per cent of the total number of such assessments shall be selected by the Commissioner in such manner as may be prescribed for the purpose of detailed scrutiny regarding the correctness of the returns submitted by the dealer and, in such cases, revision of assessment shall be made wherever necessary.

81. As per Sub-Section (4) to Section 22 of the Act, if no return is submitted by the dealer for that year, the assessing authority shall, after making such enquiry as it may consider necessary, assess the dealer to the best of its judgment, subject to such conditions as may be prescribed, wherever Sub-Section (4) to Section 22 of the Act is attracted that a reasonable opportunity of being heard shall be given because this is the first assessment as no returns were filed.

82. As per Sub-Section (5) to Section 22 of the Act, in addition to the tax assessed under sub-section (4), the assessing authority shall, in the same order of assessment passed under sub-section (4) or by a separate order, direct the dealer to pay by way of penalty, a sum which shall be, in the case of failure to submit return, one hundred and fifty per cent of the tax assessed.

83. As per the proviso to Sub-Section (5) to Section 22 of the Act, no penalty under this sub-section shall be imposed after the period of five years from the date of assessment order under this section and unless the dealer affected has had a

reasonable opportunity of showing cause against such imposition.

84. There are conflicting views of this Court in the context of Sections 22 and 27 of the Act. Under similar circumstances, in *Tvl.Ezeekart Retail Vs The State of Tamil Nadu and Others*, this Court vide its order dated 07.06.2019 in W.P.Nos.14660, 14662 and 14663 of 2019 held that assessment orders passed without affording an opportunity of hearing violated the principle of natural justice and therefore were liable to be quashed. The Court therefore remitted the case back to the respondents to pass a fresh order after hearing the petitioner therein.

85. However, in *State Bank of India Officer's Association (CC)-SBIOA Vs The Assistant Commissioner (ST)*, this Court has taken a contra view in its order dated 01.08.2019 in W.P.No.22634 of 2019. The court compared the language in proviso to Section 22(4) of the TNVAT Act, 2006 with proviso to Section 27(2). Relevant portion from *State Bank of India Officer's Association (CC)-SBIOA Vs The Assistant Commissioner (ST)* are extracted here under:

"28. On first blush, the argument of learned counsel for writ petitioner that this is a case of no returns comes across as an attractive submission, but on a closer scrutiny, it becomes clear that impugned order qualifies as a revised assessment order under section 27(1) and not as a best judgment assessment under section 22(4) for more than one reason and they are :

(a)Section 22(4) does not deal with no returns alone. It also deals with incomplete returns and / or returns filed with insufficient supporting documents scenario and therefore, section 22(4) is not a stand alone section for no returns situations;

(b)Section 22(4) does not deal with a situation of escaped assessment, whereas in the instant case on hand, it is clearly a case of escaped assessment which came to light in the surprise inspection made by the Enforcement Wing officials of Tax department;

(c)In any case, there is a proposal by Enforcement Wing before the assessing officer, the assessing officer has called for particulars and thereafter embarking upon the exercise of assessing the escaped assessment;

(d) As a corollary to preceding point, this is a case where assessment has not been made by adopting any approximation or thumb rule which is the case in a section 22(4) exercise.

This is a case where objections as well as documents have been called for from writ petitioner, the same have been scrutinized and an assessment with exactitude and specificity has been made;

(e) If the statute had used the term 'dealer' (within the meaning of section 2(15) of TNVAT Act) in section 22(4) and contrasted the same by using the term 'registered dealer' within the meaning of section 2(30) of TNVAT Act in section 27(1), the argument of writ petitioner may hold water. However, that is not the case. Though both the terms, namely, 'dealer' and 'registered dealer' are terms which have been defined under TNVAT Act separately under two sub sections of the definition clause, the statute uses the term 'dealer' in both sections 22(4) and 27(1). In other words, if the argument of writ petitioner that writ petitioner never registered itself as a dealer under TNVAT Act and therefore, section 27(1) is not attracted does not hold water, as section 27(1) uses the term 'dealer' and not 'registered dealer'.

(f) What can be deduced clearly is that the argument that section 27(1) can never apply to an entity, which has not registered itself as a dealer and filed returns is clearly unacceptable as the statute has deployed the term 'dealer' in section 27(1);

(g) It can also be further deduced that a close examination of definitions 'dealer' and 'registered dealer' reveals that it can be safely inferred that while 'dealer' is a family, 'registered dealer' is a species. Neither section 22(4) nor section 27(1) are restricted to the species of 'registered dealer';

(h) The fact that it is a case of escaped assessment, does not per se mean that it has to be best judgment assessment. It only means

that there is assessment which ought to have happened. Therefore, there is notional assessment and that is being revised. This is the reason why the statute has deployed the term 'dealer' in both section 22(4) and section 27(1). Therefore, reading it otherwise, more so in the manner in which learned counsel for writ petitioner wants this court to interpret section 22(4) is clearly impermissible.

29. If section 22(4) of TNVAT Act is dissected, it provides for assessing officer assessing the dealer to the best of assessing officer's judgment after making such enquiry that is considered necessary under five different circumstances and they are : (a) dealer not submitting any return for period of the year, (b) return filed by the dealer being incomplete, (c) return filed by the dealer being incorrect, (d) return filed by the dealer not being accompanied by prescribed documents and (e) return filed by the dealer not being accompanied by proof of payment of tax. Likewise, similar dissection of section 27(1) and (2) of TNVAT Act brings to light that it provides for assessing officer assessing the dealer to the best of assessing officer's judgment after making such enquiry that is considered necessary under six different circumstances and they are (a) when the whole of the turnover of business of a dealer has escaped assessment, (b) where any part of the turnover of business of a dealer has escaped assessment, (c) where whole of the turnover of business of a dealer has been assessed at the rate lower than the rate at which it is assessable; (d) where any part of the turnover of business of a dealer has been assessed at a rate lower than the rate at which it is assessable; (e) where Input Tax Credit (ITC) has been availed by the dealer wrongly and (f) where ITC has been availed by the dealer by producing false bills, vouchers, declaration certificates or other documents.

30. A careful perusal of aforesaid two provisions reveals that while section 22(4) makes no return being furnished for any

'period of the year', it does not talk about whole of the year, whereas [section 27](#) provides for whole of the turnover of business of a dealer escaping assessment. In the instant case, even according to writ petitioner, no return is submitted, but that is not for any period of the year, but for the entire year/years. Therefore, it is clearly a case where whole of the turnover of a dealer has escaped assessment to tax. While [section 22\(4\)](#) deals with assessment qua dealer, [section 27\(1\)\(a\)](#) deals with determination of turnover, [section 27\(1\)\(b\)](#) deals with reassessment of tax due and [section 27\(2\)](#) deals with determination of tax after reversal of ITC. In this view of the matter, owing to the facts and circumstances of the instant case, this court finds no infirmity in respondent Assessing Officer resorting to assessment under section 27(1) of TNVAT Act. Owing to the facts and circumstances of the case on hand, this court has no difficulty in accepting the submission of the Revenue counsel that impugned order has been made under section 27(1) of TNVAT Act.

31. In the instant case, from the factual matrix set out supra and the discussion thus far, it comes to light that this is a case where the writ petitioner has not registered itself as a dealer and therefore, it would be a case of 'dealer' within the meaning of [Section 2\(15\)](#). Considering the scope of instant writ petition, it may not be necessary to delve further into this aspect. It would suffice to say that this Court has noticed that terms 'dealer' as well as 'registered dealer' are terms of art which have been defined under Section 2(15) and 2(30) of TNVAT Act respectively.

32. This takes us to the next aspect of argument i.e., the reply to the show-cause notice/revisional notice not being considered.

33. A perusal of the impugned order reveals that there is a reference to the reply to the show-cause notice. The impugned order also says that reply has been examined carefully.

What according to the Assessing Officer are salient points in the reply have been set out and the same have been answered. This portion of the impugned order reads as follows:

'For the above defects notice issued from this office vide the reference second cited. They have filed their reply with records. This reply filed by them has been examined carefully.

(a) In respect of purchase of Fire Fighting Pipes, the invoice was raised in the name SBIOA. Though the material supplied to the work spot, the payment made by SBIOA. It is proved from the payment statement filed with the reply.

Therefore, the proposal is confirmed and tax levied at Rs.93,30,893.00 and levied penalty at 100% on Tax due amount.

(b) In respect of works contract awarded, the association failed to furnish the details of tax recovery (TDS) for the contract value of Rs.547, 88, 09, 797.00. When the Enforcement Officials insisted to furnish the TDS recovery details, the dealers have furnished Form S for Rs.187,75,27,174.00 for the balance contract value till date they have not furnished Form S, or Form R and Form T for recovery and remittance of the TDS.

34. Therefore in the considered view of this Court, it cannot be gainsaid that the reply of the writ petitioner being reply to the SCN/revisional notice has not been considered at all. It has certainly been considered. This Court refrains from expressing any opinion on the Assessing Officer considering the reply and on the findings returned by the Assessing Officer on the reply to the SCN. The reason is, this Court would deal with alternate remedy aspect also and if any opinion is expressed herein, it will impede and impact the alternate remedy if the writ petitioner chooses to avail the same. To be noted, this Court will be dealing with alternate remedy aspect also infra"

86. The above decision unsettles the settled position of law that no orders shall be passed without affording an opportunity of hearing to an assessee, even, where the provision does not expressly provide for an opportunity of being heard.

87. The scheme of the Tamil Nadu Value Added Tax Act (TNVAT), 2006 as also under the Tamil Nadu General Sales Tax Act (TNGST), 1959 which was in force till 31.12.2006, contemplate a self assessment by an assessee.

88. Assessment under the these Act were driven and are based on self assessed return. An assessee was required to file a self assessed return under Section 21 of the TNVAT Act, 2006. To implement the same, Rule 7 of the TNVAT Rules, 2007 was provided.

89. Along with the return, an assessee is required to also file the prescribed documents and proof of payment of tax. Tax under the said provision becomes due without notice of demand to the dealer on the last date of the period for filing of the returns. Both Section 22(4) and under Section 25 get attracted under similar circumstances. The assessing officer may either pass an order of assessment under Section 22(4) or complete the assessment provisionally under Section 25 of the TNVAT Act, 2006.

90. However, the concept of deemed assessment was introduced with effect from 19.06.2012 vide Tamil Nadu Act 23 of 2012. Section 22(4) of the TNVAT Act, 2006 was amended. Both amended and unamended Section 22 reads as under.

Section 12 of the TNGST Act, 1959	Section 22 of the TNVAT Act, 2006
Section 12. Procedure to be followed by the assessing authority. - (1)(a) The assessment in respect of a dealer shall be on the basis of the return relating to his turnover submitted in the prescribed manner within the prescribed period: Sec.12(1)(b) Notwithstanding anything contained in clause (a) of this sub-section, a dealer whose turnover which includes the total turnover under this Act, inter-State sales, export sales and stock transfers to outside the State does not exceed ten crores of rupees in a year, may make a self-assessment for that year in the manner and subject to such conditions as may be prescribed. Sec.12(1)(c) The provisions of clause (b) and sub-section (1-A) shall apply to the assessments for the financial years commencing from the 1st day of April 2001. (aa) The provisions of clause (a) and sub-section (1-A) shall apply to the assessments for the financial years, commencing on the 1st day of April 1999.]) (b) [...]	Sec.22(1) Procedure to be followed by Assessing Authority: The assessment in respect of the dealer shall be on the basis of return relating to his turnover submitted in the prescribed manner within the prescribed period. Sec.22(2) Before substitution, Sub-section (2) read as follows: "(2) The assessing authority shall accept the returns submitted for the year by the dealer, if the returns are accompanied by the proof of payment of tax and the documents prescribed and on such acceptance, the assessing authority shall pass an assessment order" Sec.22(3) Notwithstanding anything contained in sub-section (2), not exceeding twenty per cent of the total number of such assessments shall be selected by the Commissioner in such manner as may be prescribed for the purpose of detailed scrutiny regarding the correctness of the returns submitted by the dealer and, in such cases, revision of assessment shall be made wherever necessary.

Section 12 A of the TNGST Act, 1959	Section 24 of the TNVAT Act, 2006
Section 12-A. Assessment of sales shown in accounts at low prices. - (1) If the assessing authority is satisfied that a dealer as, with a view to evade the payment of tax, shown in his accounts, sales or purchases of any goods, at prices which are abnormally low compared to the prevailing market price of such goods, it may, at any time within a period of five years from the expiry of the year to which the tax relates, assess or reassess the dealer to the best of its judgment on the turnover of such sales or purchases after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such assessment. Section 12-A(2) The provisions of sub-sections (2) to (5) of section 16, shall, as far as may be, apply to assessment or reassessment under sub-section (1) as they apply to reassessment of escaped turnover under sub-section (1) of section 16.	Sec.22(4) If no return is submitted by the dealer for that year, the assessing authority shall, after making such enquiry as it may consider necessary, assess the dealer to the best of its judgment, subject to such conditions as may be prescribed: Provided that before taking action under this sub-section, the dealer shall be given a reasonable opportunity of being heard. Sec.22(5) In addition to the tax assessed under sub-section (4), the assessing authority shall, in the same order of assessment passed under sub-section (4) the assessing authority shall, in the same order of assessment passed under sub-section (4) or by a separate order, direct the dealer to pay by way of penalty, a sum which shall be, in the case of failure to submit return, one hundred and fifty per cent of the tax assessed: provided that no penalty under this sub-section shall be imposed after the period of five years from the date of assessment order under this section and unless the dealer affected has had a reasonable opportunity of showing cause against such imposition. 24. Assessment of sales shown in accounts at low prices.--(1) If the assessing authority is satisfied that a dealer has, with a view to evade the payment of tax, shown in his accounts, sales or purchases of any goods, at prices which are abnormally low compared to the prevailing market price of such goods, it may, at any time within a period of *[five] Six years from the expiry of the year to which the tax relates, assess or reassess the dealer to the best of its judgment on the turnover of such sales or purchases after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such assessment. (2) The provisions of sub-sections (3) to (8) of section 2

91. Thus, if the returns are submitted by a dealer in the prescribed form and are accompanied with prescribed documents and proof of payment of tax every dealer was deemed to have been assessed for the year on 31st of October of the succeeding year.

92. The law makers were also aware of the fact that the assessments were incomplete for the Assessment Year 2006 to 2007 upto 2010 to 2011. Therefore, bring a period certainty in finalising the assessment and to bring a closure, where assessment were not completed for the Assessment Year 2006 to 2007 upto 2010 to 2011, the assessment was deemed to have been completed on 30.06.2012 for the Assessment Year 2006 to 2007 to Assessment Year 2010 to 2011. Therefore, the self assessment could be altered only under Section 27 except in the case of situation covered under Section 25 and or Section 22(4) of the Act.

93. Thus, the under changed regime, there was no scope for calling for a personal a hearing finalising and scrutinizing the returns with the accounts and documents between the Assessment Year 2006 to 2007 and Assessment Year 2010 to 2011 and thereafter as there was a deemed assessment on 30.6.2012 and on the 31st of October of the succeeding year.

94. Only in the case where no returns were filed for any period of a year or if the returns filed was incomplete or incorrect or if not accompanied with any of the documents prescribed or proof of payment of tax, the Assessing Authority may after making an enquiry was required to assess the dealer to the best of his judgement subject to the such condition as may be prescribed. As per the proviso to Section 22(4) of the TNVAT Act, 2006. Before taking action under this sub-section, the dealer was to be given a reasonable an opportunity of being heard. Under the same circumstances provisional assessment also could be made under Section 25 of the Act as mentioned above.

95. The provision as it stood prior to 19.06.2012 contemplated an actual assessment both in the cases where returns were filed and where no returns were for a period. After 19.06.2012, where a dealer is deemed to have been assessed under the Act, an Assessing Authority was not required to issue any assessment order or intimation to the dealer. In this context, a reference may be made to Sub clause (8), (9) and (10) to Rule 8 of the TN VAT Rules, 2006 which reads as under:

"(8) (a) The assessment relating to the period from 1st day of April 2006 to 31st day of December 2006 shall be deemed assessment and accordingly, the Assessing Officer shall

accept the returns filed under the repealed Act within the period already prescribed and assess the dealers without calling for the accounts from the dealers.

(b) Where the dealer did not submit the prescribed declaration Forms or certificates as required under the provisions of the Acts repealed under Section 88 of the said Tamil Nadu Act 32 of 2006 in support of the claim of the concessional rate of tax or exemption, as the case may be, the Assessing Authority shall assess them after giving the dealer a reasonable opportunity to file the prescribed declaration Forms or certificates.]

(9) Where a registered dealer is deemed to have been assessed under the Act, the assessing authority shall not be required to issue any assessment or order or intimation to the dealer.

(10) The deemed date of service of the deemed assessment order shall fall on the 31st day of October of the succeeding year: Provided that in respect of the assessments pending for the years 2006-2007, 2007-2008, 2008-2009, 2009-2010 and 2010-2011, the deemed date of service of the deemed assessment order shall fall on the 30th day of June 2012."

96. After the amendment of Section 22 of the TNVAT Act, 2006 which has been extracted above in the beginning of this order, 22(4) can be invoked only where circumstances specified therein are attracted.

97. Section 27 of the TNVAT Act, 2006 deals with situation for escaped assessment. Under sub-section 1(a) of section 27, where , for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of sub-section (3), at any time within a period of [six years from the date of assessment] determine to the best of its judgement the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary.

98. Though the phrase used in proviso to Section 27 (2) used is no order shall be passed under sub-section (1) or sub-section (2) without giving a dealer a reasonable opportunity to show cause against such order, it is clear such assessment has to be after an enquiry is made and unless the assessee is heard, the revision of the assessment cannot be completed properly.

99. Under sub-section 1(b) of section 27, where, for any reason, the whole or any part of the turnover of business of a dealer has been assessed at a rate lower than the rate at which it is assessable, the assessing authority may, at any time within a period of [six years from the date of assessment], re-assess the tax due after making such enquiry as it may consider necessary.

100. Under sub-section 2 of section 27, where, for any reason, the input tax credit has been availed wrongly or where any dealer produces false bills, vouchers, declaration certificate or any other documents with a view to support his claim of input tax credit or refund, the assessing authority shall, at any time within a period of five years from the date of order of assessment, reverse input tax credit availed and determine the tax due after making such enquiry, as it may consider necessary.

101. The proviso to sub-section (2) states that no order shall be passed under sub-sections (1) and (2) without giving the dealer a reasonable opportunity to show cause against such order.

102. These provisions have been incorporated to give effect to Section 78 of the TNVAT Act. As per Section 78 of the TNVAT Act, any person who is entitled to appear before any authority other than the High Court in connection with any proceedings under this Act may, subject to such conditions as may be prescribed, be represented before such authority:

- "a. by his relative or a person employed full time by him, if such relative or person is duly authorised by him in writing in this behalf; or
- b. by a legal practitioner; or
- c. by an Accountant or Value Added Tax Practitioner possessing the prescribed qualifications and duly authorised by him in writing in this behalf."

103. Thus, even on this score it cannot be stated that an assessee need not be heard for the purpose of proceedings under Section 27 of the TNVAT Act. The long settled view of this Court which was cited by the learned counsel for the petitioner also make it clear that an assessee has to be heard before the assessment order is passed. Since the real assessment takes place for the first time after a notice for revision under Section 27 is issued, it would be improper to conclude that assessee/dealer need not be heard before the orders revising the assessment are passed.

104. In fact, in Circular No.7 of 2014 (BB1/3589/2014), dated the 3rd of February, 2014, it has been clarified as under:

'Guidelines and instructions regarding
disposal of Tax Cases.

(Circular No.7/2014 (BB1/3589/2014),
dated the 3rd February, 2014)

Subject: Writ petition/writ appeal/tax case
(revision)- Disposal of cases- Meeting with
Government Advocate - Certain guidelines and
circular instructions issued.

'1. During the course of meeting with the Law Officers of Madras High Court on January 30, 2014, it has been represented by them that many assessing officers are passing orders without giving reasonable opportunity to dealers and violating the principles of natural justice, which has resulted in mounting numbers of writ petitions in the High Court leading to interim stay restraining the authorities proceeding further pursuant to the orders passed. After a considerable period, the writ petitions were disposed or by setting aside the assessment proceedings with direction to the authorities to take necessary action in accordance with law.

2. It is also further represented that in some or other cases, objections raised by the dealers on the pre- assessment/revision notices are not properly examined/discussed in the order and assessment orders simply state "that the objections filed by the dealers are overruled and proposals are confirmed". Such type of orders will not also stand in the test of law. Further, where there is a provision in the Act, requiring the dealer of being given a reasonable opportunity of being heard, which has also not been followed in many cases.

3. In the light of the above, the following circular instructions are issued which must be scrupulously followed by assessing officers while passing assessment orders. Joint Commissioners/Deputy Commissioners should verify at random the assessment orders passed by the Assessing Officer while taking up cursory inspection and ensure compliance with these basic procedures while passing orders.

(a) Passing of orders:

Fifteen days time-limit shall be given as reasonable opportunity to dealers before passing any order and it shall be reckoned from the date of service of the notice. No order shall be passed without being satisfied of the reasonable opportunity and adopting the following process:-

(i) After issue of notice calling for the objections, if any, further time is requested by the dealer within a period of fifteen days, it shall be examined and reply to be given to the dealer regarding granting of time or not, as the case may be, only if there exists a genuine reason.

(ii) Objections filed by the dealer on the pre- assessment/revision notices shall be examined in each and every issue meticulously and speaking order shall be passed addressing the objections raised in short, the speaking order which is complete shall be passed.

(iii) As the provision in the TNVAT Act stipulates the conditions of granting of personal hearing, it may be intimated in the notice and it shall invariably be afforded to the dealer irrespective of whether the dealer has opted for personal hearing or not.

(b) Revision of assessment:

Under the TNVAT Act, 2006, the assessing officers usually issue orders to reverse the ITC on obvious reasons. During the current financial year, the assessing officer may issue notice to reverse the ITC for each month separately under Section 25 of the TNVAT Act, 2006. After closure of the financial year, the

assessment should be completed initially under deemed assessment under Section 22 of the Act and then only they should take revision proceedings under Section 27 of the Act. Before passing revision order, the dealer should be given reasonable opportunity and personal hearing it required so as per Section 22(4) of the TNVAT Act, 2006. No order of revision should be made without affording an opportunity to the dealer as provided under Sections 22, 25, 27 of the Act.

(c) Filing of tax case (R):

In regard to filing of tax case (revision), the time-limit to file tax case is 90 days from the date of receipt of the order of Sales Tax Appellate Tribunal by the Additional State Representative. A delay of 90 days in filing tax case beyond the first 90 days can be condoned by the High Court. In such cases, a delay condone petition should also be filed along with the tax case (revision). If the delay in filing tax case is beyond 90 days, [(i.e.,) $90 + 90 = 180$ days], the tax case will not be admitted and it will be dismissed as barred by limitation. So, the Joint Commissioners are requested to file tax case revision well within the period of permissible delay. Wherever necessary, all the Territorial Joint Commissioners including Chennai and Coimbatore divisions are instructed to file "Dummy" as per the standing instructions issued by the CCT to avoid limitation.

(d) Filing of WP/WA/TC:

A review petition on the order of writ petitioner/writ appeal/tax case (revision) may be filed before the High Court within a period of 30 days from the date of receipt of the order of High Court, if there is any fresh facts which have not been brought to the notice of the High Court while passing the order.

(e) Filing of Writ appeal:

In regard to filing of writ appeal, the time-limit prescribed is 30 days from the date of receipt of the order in the writ petition. Hence, the officer should send a copy of the order

W.P.No.22634 of 2019 immediately to the Joint Commissioner (Legal) for review, regarding the feasibility of filing of writ appeal against the said order. If it is a fit case to file writ appeal, the Joint Commissioner (Legal) will take up the issue to the SGP (Taxes), obtain legal opinion and send it to the officer for getting administrative sanction from the Commissioner through the Joint Commissioner (CT) of the respective Division. On getting orders from the Commissioner, the Officer should meet the SGP(Taxes) along with connected records to prepare Appeal Memorandum and file the writ appeal, if there is any delay in filing writ appeal, the appeal may be filed along with a delay condone petition.

(f) Collection of cheques during the course of inspection/VAT audit:

At present, there is no provision in the Act/Rules for spot collection of cheques from the dealers during inspection. Many writ petitions are being filed challenging the collection of cheques during inspections. In the above cases, the High Court of Madras has also issued directions to the enforcement authorities to return the cheques along with interest stating that there is no express provision in the TNVAT Act, 2006. The Law Officer of High Court has expressed their opinion to handle this issue carefully and not to collect cheques under duress. In such cases, assessing officer shall collect taxes after making assessment as per provision of the Act.

4. The receipt of this circular should be acknowledged by next post and you are requested to communicate this circular and obtain acknowledgement from the assessing officers under your control.

105. After the amendment to the Act, in 2012, it is at the stage of revision of assessment, an assessing officer gets an opportunity to scrutinize the return to conclude whether the self assessment was correct or incorrect. The assessment would require a personal hearing and the assessment require scrutiny of accounts, documents and returns.

106. Prior to 19.06.2012, the revision of assessment under Section 27 of the TNVAT Act, 2006 was not the first opportunity for an officer to assess an assessee.

107. Rule 17 and 18 of the TNVAT Rules, 2007 further contemplated appearance by an authorised representatives including a legal practitioners before an assessing officer/authority.

108. Therefore, I am of the view that the Impugned Orders have to be quashed and the cases have to be remitted back to the respondent to pass a speaking order. After hearing the petitioners. It is noticed that the proceedings in these Impugned Orders pertain to the assessment years from 2009-2010 to 2016-2017.

109. Considering the above, I am inclined to direct the Officer to pass appropriate orders in accordance with law preferably within a period of six months from the date of receipt of a copy of this order.

110. These writ petitions are allowed with the above direction. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

rgm/kkd

To

1.THE ASSISTANT COMMISSIONER (ST) (FAC)
DR.NANJAPPA ROAD CIRCLE,
COIMBATORE.

2.THE COMMERCIAL TAX OFFICER
CHIDAMBARAM-1,
CUDDALORE DISTRICT.

3.THE ASSISTANT COMMERCIAL (ST),
THIRUKAZHUKUNDRAM ASSESSMENT CIRCLE, NO. 42,
WAHAB NAGAR, THIRUKAZHUKUNDRAM - 603109

4.THE STATE TAX OFFICER
NAMMAK TOWN ASSESSMENT CIRCLE
NAMAKKAL

5 THE STATE TAX OFFICER
LAKSHMI NAGAR, ASSESSMENT
CIRCLE, TIRUPPUR.

6 THE STATE TAX OFFICER (ENF)
GROUP- III, TIRUPPUR.

+1 cc to Mr.N.INBARAJAN, Advocate Sr.NO. 27905

+1 cc to Special Government Pleader(TAXES) Sr.NO. 27813

W.P.Nos.2991, 2994, 2999, 3001, 3003,
3006 , 12863, 26479, 26768, 27418
& 27419 of 2019

JP(CO)

A.SK(19/07/2022)