IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2022

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.34272 of 2019
& WMP.No.34903 of 2019

Venus Rubber,
333/1, Kalappanaicken Palayam Pirivu,
Rep. by its Managing Partner ...Petitioner

Vs.

Assistant Commissioner (CT)
Velandipalayam Assessment Circle,
Coimbatore ...Respondent

Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of certiorarified mandamus calling for the records of the respondent in his proceedings leading to passing of the assessment order vide TIN:33586203553/2014-15 dated 24.05.2017 as revised by order dated 19.12.2018, quash the same as regards levy of tax under Section 12 of TNVAT Act and reversal of ITC and direct the respondent to pass fresh revised assessment order after providing an opportunity of reply and personal hearing to the petitioner.

For Petitioner : Mr.S.Sathiyanarayanan

For Respondent : Mrs.K.Vasanthamala
Government Advocate

ORDER

Heard Mr.S.Sathiyanarayanan, learned counsel for the petitioner and Mrs.K.Vasanthamala, learned Government Advocate for the respondent.

2. The petitioner was assessed under the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') by an order of assessment dated 24.05.2017 for the period 2014-15. Since, according to the petitioner, there was some error, the petitioner sought rectification of the assessment by way of an application under Section 84 of the Act.

3. The application has come to be decided by way of impugned order dated 19.12.2018. Two errors have been pointed out in the Section 84 application, one relating to addition made under Section 12, being purchase tax and the second relating to reversal of input tax credit (ITC), on interstate sales against C declaration Forms.

4. The petitioner would assail the impugned order mostly on the violation of principles of natural justice pointing out that it was in full possession of materials to have established errors arising in the original assessment but had been prevented from doing so since there have been no opportunity granted prior to passing of the impugned order.

5. It is the attempt of the learned Government Advocate to state that the petitioner was indeed heard prior to passing of the order and for this purpose she would refer to para 8 of the counter, which states as follows:

> *8. With regard to the averments made in para 7 of the affidavit, it is respectfully submitted that the dealer himself accepted and based on their request alone the assessment order passed was revised on 19.12.2018, for the error happened at the time of passing assessment order on 24.05.2017. Further in the order dt 19.12.2018 itself, it was clearly stated that the assessment was revised for the purposes of the error happened in the assessment order passed and it was revised based on the Petitioner's request. Hence, it is visible that personal hearing opportunity was awarded and the dealer's request was considered, then alone the assessment order was revised for the purposes of error happened.*

6. In my considered view, the contents of para 8 run counter to the records and, in fact, only tantamount to the position that the impugned order has been passed based on the petitioner's written request for rectification.

7. Despite repeated opportunities granted to the learned counsel for the respondent to produce a copy of the personal hearing notice or at least the date on which personal hearing was conducted, there is no response forthcoming leading to the unambiguous view that there was no personal hearing that has been granted to the petitioner prior to passing of the impugned order.

8. In such circumstances, the impugned order is set aside. The

petitioner will appear before the respondent on Monday, the 5th of December, 2022 at 10.30 a.m. without expecting any further notice in this regard along with complete particulars in respect of the request for rectification.

9. After hearing the petitioner and considering materials furnished by the petitioner, if any, the respondent shall pass orders on undated Section 84 application (placed at page 18 of compilation dated 26.11.2019), within a period of four weeks from 05.12.2022 i.e. on or before 05.01.2023. If the petitioner fails to appear on 05.12.2022, it loses the benefit of this order, and the impugned order would stand revived automatically.

10. This writ petition is disposed as above. No costs. Connected miscellaneous petition is closed.

03.11.2022

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Index : Yes/No
Speaking Order

To

Assistant Commissioner (CT)
Velandipalayam Assessment Circle,
Coimbatore

DR.ANITA SUMANTH,J.

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