**(2006) 03 MAD CK 0348**

**In the Madras High Court**

**Case No :** Writ Petition No''s. 6792 to 6794 of 2006 and W.P.M.P. No''s. 7362 to 7364 of 2006

M.M. Enterprises APPELLANT

Vs

The Commercial Tax Officer RESPONDENT

**Date of Decision :** 09-03-2006

**Acts Referred:**
Constitution of India, 1950 — Article 226
Tamil Nadu General Sales Tax Act, 1959 — Section 15

**Citation :** (2007) 5 VST 392

**Hon'ble Judges :** K. Mohan Ram, J

**Bench :** Single Bench

**Advocate :** D. Trilokchand Chopda, for the Appellant; Saraswathi Sivaraman Iyer, Government Advocate (Taxes), for the Respondent

# Judgement

K. Mohan Ram, J.—These writ petitions are listed today for admission and I heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondent.

2. The prayer in these writ petitions is for a writ of Certiorari to call for the records of the impugned proceedings of the respondent herein in TNGST Assessment Nos.0360494/2000-01 dated 30.12.2005, 0360494/2001-02 dated 30.12.2005 and 0360494/2002-03 dated 30.12.2005 respectively and quash the same and further to direct the respondent to furnish the statement and records relied upon in the orders and provide opportunity for cross-examination of third parties.

3. Though several grounds were canvassed by the learned counsel for the petitioner, the only ground which is sufficient for consideration by this Court, among other grounds, is that the respondent should have afforded an opportunity to the petitioner for cross examining one Mahendra Kumar Jain whose statement has been relied upon by the Department and that the respondent should have also furnished to the petitioner the statement of

witnesses which have been relied upon by the Department, but the same was not complied with.

4. Learned Government Advocate is not in a position to dispute the said fact. Hence, the impugned orders are set aside and the matters are remanded back to the respondent for fresh consideration. The respondent is directed to give an opportunity to the petitioner to cross examine the witnesses, whose statements are sought to be relied upon by them (sellers of the petitioner) and thereafter pass orders on merits and in accordance with law.

5. The learned Government Advocate submitted that the Department may not be in a position to secure the witnesses at this stage. If so, the Department can produce documents like cancellation of R.C. for perusal of the petitioner. In such an event, the Department can pass orders based on the document and not based on evidence recorded from the petitioner''s sellers.

6. The learned counsel for the petitioner submits that Manoharmal B. Bhandari, the erstwhile proprietor of M.M. Enterprises, the assessee died on 10.12.2002 and the same was informed to the respondent by a letter dated 06.01.2003. Pursuant to the death of the said person, the new Certificate of Registration bearing TNGST No.0361080 had been obtained in the name of the legal representative of the said deceased (wife of the deceased). But yet, the assessment order has been passed in the name of the dead person.

7. The learned counsel relied upon the judgment of the Division Bench of this Court reported in State of Madras. v. K.A. Valliammal 1973 Vol.XXXI Sales Tax Cases p.581 and submitted that an assessment made on a deceased dealer without taking note of section 15 of the Tamil Nadu General Sales Tax Act, 1959 is not valid. In the judgment, it has been further held that the mere fact that the legal representatives authorised an employee to produce the account books in pursuance of a summons issued by the department prior to the pre-assessment notice will not make the assessment made against a dead person valid.

8. Relying on the above said law laid down by the Division Bench of this Court, the learned counsel submitted that the assessment order is not a valid one. On this ground also, the impugned order is liable to be set aside. Therefore, the respondent is directed to issue notice to Mrs. Manjula Devi, who is the legal representative of deceased Manoharmal B. Bhandari as contemplated u/s 15 of TNGST Act and pass orders in accordance with law.

9. With the above directions, these writ petitions are disposed of. No costs. Consequently, connected WPMPs. are closed.