**(2015) 04 MAD CK 0271**

**In the Madras High Court**

**Case No :** Writ Petition No. 10670 of 2015 and M.P. No. 1 of 2015

S.S.M. Traders APPELLANT

Vs

The Commercial Tax Officer RESPONDENT

**Date of Decision :** 13-04-2015

**Acts Referred:**

Constitution of India, 1950 — Article 226
Tamil Nadu Value Added Tax Act, 2006 — Section 21, 22(4)

**Citation :** (2015) 04 MAD CK 0271

**Hon'ble Judges :** T. Raja, J

**Bench :** Single Bench

**Advocate :** Ghafoor Ur Rahman, for the Appellant; S. Kanmani Annamalai, AGP (T), Advocates for the Respondent

## Judgement

T. Raja, J.

1. Mr. Md. Ghafoor Ur Rahman, learned counsel appearing for the petitioner, assailing the impugned order issued by the Commercial Tax Officer, Tondiarpet Assessment Circle, Chennai dated 10.03.2015, vehemently contended before this Court that without issue of any prior show cause notice and without conducting enquiry or without affording an opportunity of personal hearing as required under the proviso to Section 22(4) of the TN VAT Act, 2006, the respondent has wrongly issued the impugned order. It is totally contrary to the rulings of the Hon''ble Supreme Court, that if any order is passed contrary to the provisions of the Act or denying the fundamental rights to file the objection/explanation, in breach of the principles of natural justice it is always well within the jurisdiction of the High Court under Article 226 of the Constitution of India, to entertain the writ petition.

2. By consent of both parties, the writ petition is taken up for disposal at the stage of admission itself.

3. Learned counsel for the petitioner would submit that for the Assessment year

2009- 2010, the petitioner company has filed the monthly returns as provided under Section 21 of the TNVAT Act, by declaring the purchases of metal scrap, furniture scrap and timber scrap. During the said year 2009-2010, the petitioner company effected sales of metal scrap only but the furniture scrap and timber scrap were actually sold in the succeeding year 2010-2011. That apart, such sales were also declared in the monthly returns filed before the respondent for the year 2010-2011. Subsequently the respondent also, on the basis of returns filed for the year 2009-2010 passed the best judgment of assessment under Section 22(4) of the TNVAT Act by his proceedings dated 10.03.2015, on the sole ground that though the petitioner has shown in the Annexure-I the purchase of timber and claimed ITC for the purchase, they have not sold any goods which lies under the rate of tax at 12.5% for the year 2009-2010. Hence, the dealer is ineligible to claim the ITC at the rate of 12.5% and thus assume wrong availment of ITC and thereupon levied the tax of Rs. 1,21,533/-, reversed the ITC of Rs. 1,39,366/- by imposing a penalty of Rs. 69,683/-. Curiously, before passing such best judgment order, the respondent has neither served on the petitioner any show cause notice proposing such assessment. A careful reading of the impugned order also shows that no notice whatsoever has been issued to the petitioner.

4. Mr. S. Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent also fairly agreed with the petitioner that no prior notice was issued and requested this Court to treat the impugned order as show cause notice, so that the petitioner is entitled to give reply and thereafter on the basis of the same, the respondent would be in a position to pass a speaking order.

5. This Court, prima facie being convinced that no notice was given before passing the impugned order, directs the petitioner to give a reply to the impugned order, treating the same as a show cause notice, within a period of three weeks from the date of receipt of a copy of this order. On receipt of such reply, the respondent is directed to consider the case and pass appropriate orders, in accordance with law.

6. With this direction, the Writ Petition stands allowed. Consequently, the connected M.P is closed. No order as to costs.

 