IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.14125 of 2015
And
M.P.No.1 of 2015

Sri Saravana Agencies
Represented by its Proprietor,
Mr.Loganathan ...Petitioner

Vs.

The Assistant Commissioner (CT),
Sholinganallur Assessment Circle,
No.141, Burma Colony,
First Main Road,
Perungudi, Chennai - 600 096. ...Respondent

Prayer:
Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records comprised in impugned order in TIN/33130926661 / 2012-2013 dated 22.01.2015 on the file of the respondent, quash the same and consequently direct the respondent to give opportunity to the petitioner before passing the assessment order.

For Petitioner : Mr.K.Megesh
For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader (T)

ORDER

This writ petition has been filed by Sri Saravana Agencies who are dealers in mineral water bottles and is carrying on business as an assessee on the file of the respondent.

2.Learned counsel appearing for the petitioner would submit that the petitioner is regular in filing the monthly returns. Whileso, when they have filed returns, an assessment order was passed on 24.12.2014 for a total turnover of Rs.12,48,207/- for which the petitioner had also paid tax of Rs.6,237/- that has been accepted by the Deputy Commercial Tax Officer, Sholinganallur Assessment Circle in his order dated 24.12.2014 passed under Section 22(2) of the Tamil Nadu Value Added Tax Act, 2006 accepting payment of tax of Rs.6,237/- for a total turnover of Rs.12,48,207/-.

3.On the same date i.e., on 24.12.2014 another officer namely, Assistant Commissioner (CT), Sholinganallur Assessment Circle is said to have issued a notice under Section 22(4) of the Act proposing to assess the dealer to the best of judgment, but the said notice has not been received by the petitioner. Therefore, they were not able to file any reply. That apart, when the Deputy Commercial Tax Officer, Sholinganallur Assessment Circle, Chennai has already passed an order under Section 22(2) of the Tamil Nadu Value Added Tax Act, 2006, they were under the impression that they had paid the tax for the assessment year 2012-13. In the meanwhile, presently the impugned order has been passed by the respondent charging the petitioner with a reason that no reply was filed to the notice dated 24.12.2014. It is also the further grievance of the petitioner that the impugned order is passed on the ground that the dealers had not filed any objections to the notice dated 24.12.2014.

4.Heard the learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (T) who takes notice for the respondent. The learned Additional Government Pleader (T) placed a copy of the notice issued by the respondent on 24.12.2014 proposing to assess the dealers to the best of judgment under Section 22(4) of the Act.

5.A perusal of the notice dated 24.12.2014 passed under Section 22(4) of the Act shows that it has been received by summon on 13.01.2015 and not by the petitioner. The order impugned has been passed on 22.01.2015. Therefore, this Court taking note of the fact that the notice dated 24.12.2014 giving seven days time ought not to have been issued, this Court taking note of the fact that the petitioner's assessment was already accepted on 24.12.2014 by the Deputy Commercial Tax Officer, Sholinganallur Assessment Circle under Section 22(2) of the Tamil Nadu Value Added Tax Act, 2006 for the assessment year 2012-13, again issuance of the notice under Section 22(4) of the Act may not be correct, as the matter of fact he should have issued notice under Section 27 of the Act. Therefore, the impugned order passed being contrary to theirown order issued under Section 22(2) of the Tamil Nadu Value Added Tax Act, 2006, the same is set aside on the ground of non application of mind. However, it is left open to the respondent to issue fresh notice under Section 27 of the Act and after receiving objection, it is open to him to pass an order only after giving personal hearing.

6.Accordingly, the writ petition stands allowed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Assistant Commissioner (CT),
Sholinganallur Assessment Circle,
No.141, Burma Colony,
First Main Road,
Perungudi, Chennai - 600 096.

+1cc to Mr.K. Magesh, Advocate, S.R.No.29625
+1cc to the Government Pleader, S.R.No.29581

TEJ(CO)
EU(22/07/2015)

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