IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2015

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.17978 and 17979 of 2015
and M.P.Nos.1 & 2 of 2015

M/s.Allvinn Traders (Defunct)
[Petitioner]
Rep by its Partner V.Santhi
No.60,Thiruvalluvar Nagar
Reddivalasu Road
Vellakovil 638 111. Petitioner Both WPs.

Vs

The Assistant Commissioner (CT)
Kangeyam Tirupur District
[Respondent both WPs.

PRAYER : The Writ petition is filed under Article 226 of the Constitution of India praying for a Writ of certiorari, calling for the records on the file of the respondent in its impugned proceedings made in TIN 33743085497/2013-14 and 2014-15 respectivley (CST:1155886) dated 23.3.2015 quash same.

For Petitioner : Ms.R.Hemalatha

For Respondent : Mr.V.Haribabu, AGP(T)

O R D E R

Heard Ms.R.Hemalatha, learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader (Taxes), who took notice for the respondent and with their consent, the main writ petitions are taken up for final disposal.

2. These two writ petitions are filed by M/s.Allvinn Traders (Defunct), represented by its Partner V.Santhi , challenging the impugned orders passed by the Assistant Commissioner (CT), Kangeyam, Tirupur District

3.1 Learned counsel for the petitioner would submit that the impugned orders dated 23.03.2015 passed by the respondent is unsustainable on the ground that the same are void ab initio.

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3.2 According to the learned counsel for the petitioner, when the respondent has passed the Best Judgment Assessment under Section 22(4) of the TANVAT Act, an opportunity of personal hearing as contemplated under Section 22(4) of the TANVAT Act ought to have been provided, but, as far as the case of the petitioner is concerned, the respondent did not give a reasonable opportunity of personal hearing and simply passed the impugned orders on the basis of the report submitted by the Enforcement Wing Officials and therefore, the same are liable to be set aside.

3.3 That apart, according to the learned counsel for the petitioner, the petitioner is dealing in Copra and a registered dealer on the file of the respondent. Whileso, the respondent has issued notices in TIN 33743085497/2013-14 and 2014-15 respectively, stating that on cross verification of the monthly returns filed by the petitioner with that of M/s Mario Ltd., Chennai (TIN 33111121254), it revealed that the petitioner has suppressed the effected sales of Copra to the above Company and collected VAT at 5%, but refrained from payment of tax and therefore, they propose to assess for the year 2013-14 and 2014-15 respectively to the best of Judgment under Section 22(4) of the TANVAT Act.

3.4 Adding further, learned counsel for the petitioner would submit that in the meanwhile, the petitioner remitted the tax due of Rs.9,50,000/- (2013-14) and Rs.5,09,690/- (2014-15) along with interest due at Rs.1,17,336 (2013-14) and Rs.44,600/- (2014-15) on 14.10.2014. The grievance of the petitioner, according to the learned counsel for the petitioner is that even after the receipt of payment of tax and interest thereon, the respondent has passed the impugned orders under Section 22(4) of the TNVAT Act along with penalty under Section 22(5) of the TNVAT Act.

3.5 Therefore, it was submitted before this Court by the learned counsel for the petitioner that when the petitioner has filed revised monthly returns and paid tax of Rs.9,50,000/- (2013-14) and Rs.5,09,690/- (2014-15) along with interest due at Rs.1,17,336 (2013-14) and Rs.44,600/- (2014-15) on 14.10.2014, the respondent ought not to have passed the impugned orders under Section 22(4) of the TANVAT Act, without providing an opportunity of personal hearing to the petitioner, as it is mandatory.

4. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

5. A perusal of the impugned orders shows that the petitioner by filing revised monthly returns, has paid both the tax due of Rs.9,50,000/- (2013-14) and Rs.5,09,690/- (2014-15) and the interest

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due at Rs.1,17,336 (2103-14) and Rs.44,600/- (2014-15) on 14.10.2014. Therefore, when the petitioner has cleared the tax due and interest thereupon, the respondent, without giving an opportunity of personal hearing, passed impugned orders, levying penalty invoking Section 22 (5) of the TANVAT Act.

6. Since levy of penalty without prior notice is contrary to the well settled legal position, the impugned orders are set aside and the matters are remitted back to the respondent for fresh consideration. It is needless to mention that the respondent is directed to issue notice of hearing to the petitioner and thereafter pass appropriate orders.

The writ petitions are allowed. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Asst. Commissioner (CT)
Kangeyam, Tirupur District.

+ 2 ccs to Mrs. R. Hemalatha, Advocate Sr.30560
+ 1 cc to Special Government Pleader Sr.30851

W.P.Nos.17978 and 17979 of 2015

SCD(CO)
Eu 03.07.15

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