IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.20150 of 2015

and

Mp.1 of 2015

Vayuputhra Marketing Private Limited
represented by its Director P.Jayaprakash
No.19, Ramanujam Street
Gandhi Nagar, Avadi
Chennai 600 054 .. Petitioner

-vs-

Assistant Commissioner (CT)
Avadi Assessment Circle
No.9, Second Street
Kasturibai nagar
Avadi
Chennai 600 054 .. Respondent

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records relating to impugned proceedings of the respondent passed in TIN No.33751300934/2008-2009 dated 15.05.2015 and quash the same and further direct the respondent to complete the assessment in accordance with the provisions of the TNVAT Act, 2006.

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For Petitioner :: Mr.N.Murali

For Respondent :: Mr.S.Kanmani Annamalai
Addl.Government Pleader (Taxes)

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ORDER

This writ petition is directed against the impugned proceedings issued by the Assistant Commissioner (CT), Avadi Assessment Circle, Chennai in TIN No. 33751300934/2008-2009 dated 15.05.2015, on the only ground that the respondent had not provided an opportunity of personal hearing before passing the impugned order for the assessment year 2008-09, as per Section 27 (2) of the Tamil Nadu Value Added Tax Act, 2006 (for short, ''the TNVAT Act, 2006'').

2. Learned counsel for the petitioner submitted that when the respondent has passed the impugned order, confirming the proposal without granting any personal hearing, he has also levied penalty under Section 27(4)(i) of the TNVAT Act, 2006 for the wrong claim of input tax credit, namely, Rs.90,327/- without giving an opportunity to show cause, as there was no proposal with regard to levy of penalty in the pre-assessment notice dated 21.4.2015. Adding further, he submitted that the petitioner, being a registered dealer on the file of the respondent, has completed the assessment for the year 2008-09 under self-assessment basis as per Section 22(1) of the TNVAT Act. Subsequently, the assessment was scrutinised on random selection basis by the Commissioner of Commercial Taxes under Section 22(3) of the Act. Thereafter, when summons were issued on 25.11.2014 for production of books of accounts, on taking time, as they related to more than five years, the petitioner produced the books of accounts on 24.4.2015. It is also claimed that the respondent has accepted the books of accounts, but subsequently passed the impugned order levying tax to the extent of Rs.2,09,557/- along with penalty of Rs.90,327/- without giving an opportunity of personal hearing.

3. Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent, finding that without any proposal and without giving personal hearing to the petitioner, the respondent has levied penalty under Section 27(4)(i) of the TNVAT Act, is unable to support the impugned order.

4. The issue is no longer res integra as, this Court, setting aside similar orders in W.P.Nos.15556 to 15558 of 2015 by order dated 19.6.2015 (The Mobile Store Services Limited, Chennai v. The Assistant Commissioner (CT), Rattan Bazaar Assessment Circle), held that as per Section 27(2), no order shall be passed without giving an opportunity of personal hearing to the assessee. In the present case, this Court finds that in the pre-assessment notice issued to the petitioner dated 21.4.2015, there was no proposal by the respondent with regard to the levy of penalty, therefore, personal hearing is required as per Section 27(4) of the TNVAT Act. Accordingly, this Court, by setting aside the impugned order, hereby directs the respondent to provide

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personal hearing to the petitioner as contemplated under Section 27 of the TNVAT Act and thereafter to pass appropriate orders on merits and in accordance with law. The respondent is further directed to issue notice to the petitioner mentioning the date of personal hearing. The writ petition stands allowed. Consequently, M.P.No.1 of 2015 is closed. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

ss

To

1. The Assistant Commissioner (CT)
   Avadi Assessment Circle
   No.9, Second Street
   Kasturibai nagar
   Avadi
   Chennai 600 054

   +1cc to Mr.N.Murali, Advocate sr.no. 34166
   +1 cc to Special Government pleader(Taxes) sr.no.34765.

W.P.No.20150 of 2015

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