IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.21718 & 21719 of 2015

N.R.G.Agencies
represented by its Partner
S.Srinivasan
No.56, Sedan Thottam
Coimbatore ...Petitioner in both the writ petitions

-vs-

The Assistant Commissioner (CT)
Thudiyalur Assessment Circle
Commercial Taxes Complex
Balasundaram Road
Coimbatore-18 ...Respondent in both the writ petitions

Petitions under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records on the files of the respondent herein in TIN:33542024233/2009-10 & 2010-11 dated 18.5.2015 and quash the same with the direction to redo the assessments after providing an opportunity of being heard and pass orders in accordance with the provisions of the TNVAT Act, 2006.

For Petitioner in both petitions : Mr.N.Inbarajan

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

ORDER

These writ petitions have been filed by M/s N.R.G.Agencies represented by its Partner challenging the impugned orders dated 18.5.2015 passed by the respondent for the assessment years 2009-10 & 2010-11 respectively in respect of TIN No.33542024233, on the ground that the respondent, having issued the revision notices dated 19.11.2014, without indicating any proposals to levy penalty under Section 27(4) of the Tamil Nadu Value Added Tax Act, 2006 (for short, ''the TNVAT Act''), subsequently, after receipt of detailed replies from the petitioner, has passed the impugned orders confirming the proposals made in the revision notices and also imposing penalty invoking Section 27(4) of the TNVAT Act, which can be imposed only if there is any order under Section 27(2) of the TNVAT Act.

2. Learned counsel for the petitioner further submitted that the impugned orders passed by the respondent reversing the input tax credit invoking Section 19(16), citing a reason that the transactions stood unmatched and the sellers had not paid the tax, is running contrary to the ratio laid down by this Court in the case of Sri Vinayaga Agencies v. Assistant Commissioner (CT), Vadapalani Assessment Circle, Chennai and another, (2013) 60 VST 283 (Mad), therefore, both the reasons given by the respondent/assessing officer are liable to be set aside. Concluding his arguments, he also submitted that since the respondent has levied penalty under Section 27(4), without there being any finding as to the wrongful availment of input tax credit by the petitioner and that too, without complying with the mandatory requirement of personal hearing, the respondent, in all fairness, ought not to have confirmed the proposals.

3. Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes) for the respondent, while replying to the submissions made by the learned counsel for the petitioner, with regard to the levy of penalty imposed under Section 27(4), is unable to meet the contention.

4. This Court also finds that in the revision notices dated 19.11.2014, there was no proposal made by the respondent to levy penalty, therefore, as held by this Court time and again, before levying penalty invoking Section 27(4), the assessee should be put on notice and should be given a reasonable opportunity of being heard, as contemplated under Section 22(4) of the TNVAT Act and since the said mandatory provision has been completely given a go-by by the respondent, the impugned orders are liable to be interfered with. Accordingly, the impugned orders are set aside and the matters are

remanded back to the respondent for fresh consideration in accordance with law. It is made clear that the respondent shall issue notice in advance informing the petitioner of the date of personal hearing. The writ petitions stand allowed. Consequently, M.P.Nos.1 of 2015 are closed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

ss

To

The Assistant Commissioner (CT)
Thudiyalur Assessment Circle
Commercial Taxes Complex
Balasundaram Road
Coimbatore-18

1 CC to Mr.N.Inbarajan, Advocate SR.No. 36802

1 CC to the Government Pleader, SR.No. 36843

W.P.Nos.21718 & 21719 of 2015

AK (CO)
PSI (21.08.2015)