IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.02.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.2583 and 2584 of 2015
and M.P.Nos.1 of 2014

M/s.Star Oil Mills   Petitioner in both the petitioner
No.20 Dr.Sadasivam Road
T.Nagar, Chennai 17.

Vs

Commercial Tax Officer
Pondy Bazaar Assessment Circle
Greenways Road Chennai 28   Respondent in -do-

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus to call for the records of the respondent in his proceedings in TIN No. 33291520504 / 2012-13 and 2013-14 respectively dated 19.12.2014 and quash the orders passed therein and to direct the respondent to pass orders under Section 3 (4) of TNVAT Act and also provide an opportunity of personal hearing under TNVAT Act.

For Petitioner : Mr.C. Bakthasiromoni
For Respondent : Mr.Kanmani Annamalai, AGP (T)

O R D E R

The petitioner has come forward with these writ petitions challenging the orders of the respondent dated 19.12.2014 and to direct the respondent to pass orders under Section 3 (4) of the Tamil Nadu Value Added Tax, 2006 (hereinafter referred to as "the 2006 Act") and also provide an opportunity of personal hearing under the said Act.

2. The grievance of the petitioner is that when the petitioner has given a letter dated 27.04.2012 seeking permission to pay tax under Section 3(4) of the 2006 Act, the respondent, after receiving the same on 30th April, 2012, without giving a reply to the same, passed the impugned orders on 19.12.2014 for the assessment years 2012-13 and 2013-14.

3. The respondent finally assessed the dealer viz., the petitioner to the Best Judgment under Section 22(4) read with Section 25 of 2006 Act and directed the petitioner to pay the tax as well as penalty at 150% under Section 27(3)(C) of the said Act.

When an assessment has been made under Section 22(4) of the 2006 Act, an opportunity ought to have been given to the petitioner.

4. For the sake of convenience, Section 22(4) of the Act 2006 is extracted below:-

> "(22) Procedure to be followed by Assessing Authority:-
>
> (1)...
>
> (2)...
>
> (3)....
>
> (4) If no return is submitted by the dealer for that year, the assessing authority shall, after making such enquiry as it may consider necessary, assess the dealer to the best of its judgment, subject to such conditions as may be prescribed:
>
> Provided that before taking action under this sub-section, the dealer shall be given a reasonable opportunity of being heard".

In this case, admittedly, no opportunity was given to the petitioner.

5. Hence, without going into the merits of the matter, on the ground of violation of principles of natural justice, the impugned orders dated 19.12.2014 are set aside. The matters are remitted back to the original authority to pass orders afresh, after giving an opportunity to the petitioner of being heard. Since the petitioner has exercised his option under Section 3 of the 2006 Act, it is open to the authority concerned to consider the same. The petitioner is entitled to file his objections and he is directed to appear before the respondent for personal hearing on 27.02.2015. In case he fails to utilize this opportunity for any reason whatsoever, the respondent being the competent authority is entitled to pass fresh orders on merits and in accordance with law, being uninfluenced by this order passed by this Court in these writ petitions.

The writ petitions are disposed of accordingly. No costs. Connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

Commercial Tax Officer
Pondy Bazaar Assessment Circle
Greenways Road Chennai 28

+ 1 cc to Mr.C. Bakthasivomoni, Advocate SR.586

W.P.Nos.2583 and 2584 of 2015

CTK(CO)
Eu 21.02.15