IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.30528 of 2015
and M.P.No.1 of 2015

M/s. Renaatus Procon (P) Ltd [Petitioner]
rep. by its Managing Director
P. Selvasundaram
156 Mullamparappu
N.G.Palayam, Erode

Vs

1 The Authority for
Clarification and Advance Ruling
Ezhilagam, Chepauk Chennai - 5

2 The Assistant Commission (CT)
Erode Rural Circle, Erode

[Respondents]

Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus calling for the records of the First Respondent in his proceedings in ACAAR No. 135/2014-15 / Acts Cell-II/7028/2015 dated 2.9.2015 and quash the same as illegal and direct the First Respondent to reconsider the issue after affording a personal hearing to the Petitioner as contemplated under Section 48A of the TNVAT Act read with Rule 12A of the TNVAT Rules.

For Petitioner : Mr.S.Ramanathan
For Respondents : Mr.S.Kanmani Annamalai, AGP(T)

O R D E R

Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes) takes notice for the respondents and with the consent of the learned counsel on either side, the main writ petition is taken up for disposal.

2. This writ petition has been filed challenging the order of the 1st respondent dated 2.9.2015 and to direct the 1st respondent to

reconsider the issue, after affording a personal hearing to the petitioner as contemplated under Section 48A of the TNVAT Act read with Rule 12A of the TNVAT Rules.

3. The learned counsel for the petitioner would submit that the petitioner, being the manufacturers and dealers in Sand Lime Bricks, which is manufactured by using the raw materials such as cement, sand, gypsum powder and lime powder, are the registered dealers under the TNVAT and CST Acts and are assesses on the file of the 2nd respondent. For the assessment year 2013-14, under the TNVAT Act, the petitioners reported a total and taxable turnover of Rs.9,70,20,296/-. According to the learned counsel for the petitioner, they have collected tax at 5% on the sand lime bricks and have reported the turnover taxable at 5%. The return filed by the petitioner was accepted and self assessment was deemed to have been made under Section 22(2) of the TNVAT Act. According to the learned counsel for the petitioner, a notice dated 9.2.2015 was issued to the petitioner stating that on verification of the return filed by the petitioner, it was found that the rate of tax adopted by them at 5% was incorrect and taxable at 14.5%. Aggrieved over the same, the petitioner filed a petition dated 2.3.2015 before the 1st respondent under Section 48A of the TNVAT Act, read with Rule 12 A of the TNVAT Rules for a clarification on the rate of tax, by explaining the commodity dealt by them are taxable only at 5% and enclosing the product information and picture of the product. However, the 1st respondent, by proceedings dated 2.9.2015 has clarified that the RCC blocks claimed as Sand Lime Bricks by the petitioner fall under Entry 15 of Part C of the I Schedule of TNVAT act taxable at 14.5%. Aggrieved over the same, the petitioner is before this Court.

4. The learned counsel for the petitioner would submit that as per Section 48 A of the TNVAT Act read with Rule 12-A of the TNVAT Rules, that an opportunity of being heard should be given to the assessee before rejecting the application. However, as far as the case in hand is concerned, the impugned order was passed without providing an opportunity of hearing. Hence, on the ground of violation of principles of natural justice, the impugned order is liable to be quashed. In support of the above contention, the learned counsel for the petitioner had also relied on a Judgment of this Court reported in [2014] 68 VST 494 (Mad) (Supreme Industries Ltd., vs. Authority for Clarification and Advance Ruling Chepauk, Chennai and another, wherein, this Court has held as follows:-

> "... Admittedly, the application filed by the petitioner seeking clarification on the product has been rejected holding that it falls under a different category, namely, Part C of the I Schedule to the TNVAT Act, 2006. Therefore, before rejecting the petitioner's application, the proviso to section 48A of the TNVAT Act, 2006 and rule 12 A of the TNVAT Rules, 2007, necessarily have to be followed. Admittedly, in this case, no opportunity of personal hearing was given to the petitioner. In such view

of the matter, the impugned order is liable to be set aside".

5. At this juncture, it is relevant to extract Section 48A of the TNVAT Act 2006 and its proviso, which reads as follows:-

> "48A. Clarification and advance ruling:- (1) The Government may constitute a State Level Authority for Clarification and Advance Ruling (hereinafter in this section, referred to as 'the Authority'), comprising of the Commissioner of Commercial Taxes and two Additional Commissioners to clarify, any point concerning the rate of tax, on an application by a registered dealer:
>
> Provided that no such application shall be entertained unless it is accompanied by proof of payment of such fee, paid in such manner, as may be prescribed.
>
> (2) No application shall be entertained where the question raised in the application:
>
> (i) is already pending before any appellate or revising authority of the Department or Appellate Tribunal or any court; or
>
> (ii) relates to an issue which is designed apparently for avoidance of tax:
>
> Provided that no application shall be rejected under this sub-section without giving the applicant a reasonable of being heard and where the application is rejected, reasons for such rejection, shall be recorded in the order".

6. It is also useful to extract hereunder Rule 12 A of the TNVAT Rules, which reads as follows:-

> "12A Authority for Clarification and Advance Ruling:
>
> (1) Every application under section 48A by a registered dealer, seeking clarification on any point concerning the rate of tax, shall be made to the Authority in form VV in quadruplicate and shall be accompanied by a crossed banker's cheque in favour of State Bank of India or crossed demand draft or pay order of a bank in support of having paid a sum of rupees one thousand only in favour of the Commissioner of Commercial Taxes, Chennai.
>
> (2) On receipt of any such application, the authority shall cause a copy thereof to be forwarded to the assessing or registering authority concerned and call for any information or records.

(3) The authority may, after examining such application and the records called for, by order, either admit or reject the application within thirty days from the date of receipt of the application:

Provided that no application shall be rejected without giving the applicant a reasonable opportunity of being heard and the reasons for rejection shall be recorded in the order".

7. The learned Additional Government Pleader (taxes) appearing for the respondents would submit in view of the submission made by the learned counsel for the petitioner that no opportunity was given to the petitioner before passing the impugned order, fresh orders would be passed after providing sufficient opportunity to the petitioner.

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

9. In view of the fact that the petitioner was not provided with an opportunity of personal hearing before passing the impugned order, coupled with the fact that the respondent department has not followed the statutory provisions provided under the Act as stated supra and also in view of the Judgment of this Court reported in [2014] 68 VST 494 (Mad) referred supra, the impugned order is liable to be set aside and the matter has to be remitted back to the 1st respondent for passing orders afresh.

10. In the result, the impugned order of the 1st respondent dated 02.09.2015 is set aside and the matter is remitted back to the 1st respondent for passing appropriate orders, after affording an opportunity of personal hearing to the petitioner. Such exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

The writ petition is disposed of with the above directions. No costs. Connected miscellaneous petition is closed.

-sd/-

ASSISTANT REGISTRAR

/ TRUE COPY /

SUB-ASSISTANT REGISTRAR

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To

1 The Authority for
Clarification and Advance Ruling
Ezhilagam, Chepauk Chennai - 5

2 The Assistant Commission (CT)
Erode Rural Circle, Erode

+1 CC to Mr.S.Ramanathan Advocate. SR.NO. 51776
+1 CC to Special Govt.Pleader. SR.NO.53112

W.P.No.30528 of 2015

CO-GGK

JD 13/10/2015