IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.03.2015

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THE HONOURABLE MR.JUSTICE M.DURAISWAMY.J

WP.No.6666 of 2015
and M.P.Nos.1 & 2 of 2015

Tvl. Vivek Limited,
Represented by its Vice President
(Finance & Corporate Affairs)
Thiru.B.K.Anand,
No.133, Royapettah High Road,
Chennai - 600 004. .. Petitioner

Versus

The Assistant Commissioner (CT),
Mandaveli Assessment Circle,
No.46, Pasumpon Muthuramalingam Salai,
Chennai - 600 028. .. Respondent

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records in respect of the Assessment Order bearing TIN 33530801214/2012-13 dated 27.01.2015 passed by the respondent in respect of the assessment year 2012-2013 under the Tamil Nadu Value Added Tax Act 2006 and the consequent demand notice dated 27.01.2015 issued by the respondent and quash the same.

For Petitioner : Mr.Satish Parasaran

For Respondent : Mr.Manoharan Sundaram
AGP (Tax)

ORDER

Heard Mr.Satish Parasaran, learned counsel for the petitioner and Mr.Manoharan Sundaram, learned Additional Government Pleader (Tax), who takes notice for the respondent and with the consent of both the learned counsels, the writ petition is disposed of by this order at the admission stage.

2.The petitioner has filed the above writ petition to issue a Certiorari, to call for the records in respect of the Assessment Order dated 27.01.2015 passed by the respondent in respect of the assessment year 2012-2013 under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter after referred to as "the Act") and the consequent demand notice dated 27.01.2015 issued by the respondent and to quash the same.

3.The only ground raised by the petitioner is that the petitioner was not given an opportunity to show cause as contemplated under proviso to Section 27 (2) of the Act.

4. Proviso to Section 27(2) of the Act reads as follows :

> "Provided that no order shall be passed under sub-sections (1) and (2) without giving the dealer a reasonable opportunity to show cause against such order."

5. Mr.Manoharan Sundaram, learned Additional Government Pleader appearing for the respondent submitted that the respondent had already given a notice to show cause on 29.07.2013, therefore, the respondent had complied with the provisions of Section 27(2) of the Act.

6. A reading of the notice dated 29.07.2013, which is annexed at page No.1 of the typed set of papers, it could be seen that the petitioner was called upon to furnish the details in respect of their sales return claimed within 3 days and it was also made clear that failure to give the details within the stipulated time, the respondent would initiate action under the provisions of the Act.

7. From the provisions of Section 27(2) of the Act, it is clear that the dealer should be given a reasonable opportunity to show cause against the order. But, in the notice dated 29.07.2013, the petitioner was called upon only to furnish some details. It was not called upon to show cause against the order. Therefore, the notice issued on 29.07.2013 cannot be construed as a show cause notice, as contemplated under Section 27(2) of the Act.

8. In these circumstances, since the respondent has not complied with the mandatory provisions of Section 27(2) of the Act, the impugned order is liable to be set aside.

9. Accordingly, the impugned orders dated 27.01.2015 are quashed. However, the respondent is at liberty to issue a fresh show cause notice to the petitioner and to give a reasonable opportunity to the petitioner to show cause against the order. The petitioner is also at liberty to file its explanation to the show cause notice to be issued by the respondent.

With these observations, the writ petition is allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

rg/ds

To

The Assistant Commissioner (CT),
Mandaveli Assessment Circle,
No.46, Pasumpon Muthuramalingam Salai,
Chennai - 600 028.

1 cc to Mr. Satish Parasaran, Advocate, sr. 13439
1 cc to Spl.Government Pleader, sr. 13792

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SCD (CO)
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