IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.8695 of 2015
And
M.P.No.1 of 2015

M/s.Deepam Steels
[ Petitioner ]
Rep. by its Partner
No.17 New Shopping Complex
Bharathi Nagar, SIPCOT, Ranipet. ..Petitioner

Vs

The Commercial Tax officer
Ranipet (SIPCOT) Assessment Circle
Ranipet, Vellore District. .. Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus to call for the records of the respondent and quash the assessment proceedings in TIN No.33654360951/ 2013-2014 dated 1.9.2014 and direct the respondent to pass fresh orders by providing an opportunity of person hearing to the petitioner as provided under Section 22(4) of TNVAT Act.

For Petitioner : Mr.C.Baktha Siromani

For Respondent : Mr.V.Haribabu, AGP(T)

O R D E R

The petitioner has come forward with this writ petition challenging the order of the respondent dated 01.9.2014 and for a direction to the respondent to pass fresh orders, by providing an opportunity of personal hearing to the petitioner, as provided under Section 22(4) of Tamil Nadu Value Added Tax, 2006 (hereinafter referred to as "the TNVAT Act").

2. Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Taxes) for the respondent.

3. The grievance of the petitioner is that the respondent has not given any personal hearing to the representative of the petitioner prior to passing the impugned order.

4. The learned counsel for the petitioner submitted that the provisions of Section 22(4) of the TANVAT Act is mandatory in nature and hence the respondent ought to have given an opportunity to the petitioner to putforth its case. He further submitted that if an opportunity is given to the petitioner , they would be able to convince the authority.

5. The learned counsel for the petitioner further submitted that the petitioner has also agreed to pay 10% of the tax amount as determined in the impugned order and they would co.operate to enable the assessing officer to complete the proceedings afresh.

6. For the sake of convenience Section 22(4) of the TANVAT Act 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.

7. Hence, without going into the merits of the matter, on the ground of violation of principles of natural justice, the impugned order dated 01.09.2014 is set aside and the matter is remitted back to the respondent for passing fresh orders. The respondent is directed to accept 10% of the tax amount as determined in the impugned order, which the petitioner has agreed to pay the same. On receipt of the said amount, the respondent is directed to give an opportunity of personal hearing to the representative of the petitioner as provided under Section 22(4) of the Act and decide the matter afresh on merits and in accordance with law.

8. The learned counsel for the petitioner also agreed that the representative of the petitioner would appear before the respondent on 27.04.2015 for personal hearing. After hearing the representative of the petitioner on 27.04.2015, the respondent is directed to decide

the matter on merits and in accordance with law. In case the representative of the petitioner Company fails to avail this opportunity on 27.04.2015, the authority is empowered to pass orders afresh on merits and in accordance with law based on the available records.

This writ petition is disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax officer
Ranipet (SIPCOT) Assessment Circle
Ranipet, Vellore District.

+ 1 cc to Mr.C. Baktha Siromani, Advocate SR.17154
+ 1 cc Government Pleader Sr.17311

SAI(CO)
EU 10.04.2015