IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.9199 to 9201 of 2015
And
M.P.Nos.1 & 2 of 2015

Tvl.J.K.S.Construction Pvt.Ltd [Petitioner in all WPs]
12 Sammandham Street
Bharathipuram, Chrompet
Chennai-600 044
Rep. by its Executive Director
J.Saravanan

Vs

The Assistant Commissioner(CT)
Chrompet Assessment Circle
117 Station Road Radha Nagar
Chennai-600 044.

[Respondent in all WPs]

Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the proceedings of the respondent contained in TIN:33890944188/2011-12, 2012-13 and 2013-14 respectively dated 12.01.2015 and the consequential proceedings respectively impugned in W.P.No.9199/15 in TIN 33890944188/14-15/2015/A3 dated 20.02.2015 and quash the same and pass orders directing the respondent to provide an opportunity to present its objections.

For Petitioner : Mr.S.Raveekumar for Mr.Hariharan

For Respondent : Mr.Manoharan Sundaram, AGP(T)

O R D E R

Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Taxes), who took notice for the respondent and with their consent, the writ petitions themselves are taken up for hearing.

2. The petitioner has come forward with these writ petitions challenging the orders of the respondent dated 12.01.2015 and 20.02.2015 and for a direction to the respondent to provide an

opportunity to present its objections.

3. The learned counsel for the petitioner Company submitted that the grievance of the petitioner Company is that even though in the impugned orders, it has been stated that even after serving of notices on the dealers, they have not filed any objection and that the petitioner has not availed sufficient opportunity given to them and hence they are confirming the proposals and revised orders are passed, no opportunity of being heard was given to the representative of the petitioner. Hence, the impugned orders are liable to be quashed.

4. 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 orders and they would co.operate to enable the assessing officer to complete the proceedings afresh.

4. A glance over the impugned assessment orders would show that the petitioner was not given an opportunity of being heard. For the sake of convenience, Section 22 of the Tamil Nadu Value Added Tax, 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 of being heard 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 assessment orders dated 12.01.2015 are set aside and the matters are remitted back to the respondent for passing fresh orders. The respondent is directed to accept 10% of the tax amount in each of the assessment years as determined in the impugned orders, which the petitioner has agreed to pay the same on or before 01.06.2015. On receipt of the said amount, the respondent is directed to defreeze

the bank account of the petitioner and 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 02.06.2015 for personal hearing. After hearing the representative of the petitioner on 02.06.2015, the respondent is directed to decide the matters on merits and in accordance with law. In case the representative of the petitioner Company fails to avail this opportunity on 02.06.2015, the authority is empowered to pass orders afresh on merits and in accordance with law based on the available records.

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

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
The Assistant Commissioner(CT)
Chrompet Assessment Circle
117 Station Road Radha Nagar
Chennai-600 044.

3 cc to Mr.Mr.Hariharan ,Advocate, SR.No.18127

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scd(co)
pmk.1.4.2015