BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.01.2015**

CORAM:
THE HONOURABLE MR.JUSTICE **B.RAJENDRAN**

W.P.(MD)Nos.1024 and 1025 of 2015
and
M.P.Nos.1 and 1 of 2015

M/s.M.P.C.N.Nulyee Pharma,
Rep by its Proprietor Mr.M.P.C.N.Sasikanthan,
42, Malai Kovil Street,
Virudhunagar. : Petitioner in both the petitions

Vs.

The Assistant Commissioner [CT]-3 [FAC],
Virudhunagar Assessment Circle,
Virudhunagar. : Respondent/in both the petitions

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for the issue of a Writ of Certiorari to call for the records of the respondent in his proceedings in TIN Nos.33615762332/2013-14/A4 and 33615762332/2014-15/A4 and quash the notice dated 16.12.2014.

For Petitioner : Mr.R.D.Ganesan

For Respondent : Mr.A.Muthukaruppan
Additional Government Pleader

COMMON ORDER
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Mr.A.Muthukaruppan, learned Additional Government Pleader, takes notice for the respondent. By consent, the Writ Petitions are taken up for disposal at the stage of admission itself.

2. Challenge in these Writ Petitions is to the impugned notices in TIN Nos.33615762332/2013-14/A4 and 33615762332/2014-15/A4, dated 16.12.2014.

3. Mr.R.D.Ganesan, learned counsel appearing for the petitioner, would submit that the impugned notices are liable to be set aside on the sole ground that without issuing any show cause notice, straightaway, the impugned notices have been issued, directing to pay tax with interest at the rate of 2% per month, which is in violation of the principles of natural justice. He would also submit that under Section 27(2) of the Tamil Nadu Value Added Tax Act, 2006, there is a mandatory provision that before passing such an order, an opportunity of being heard has to be provided to the dealer concerned. He would further submit that this Court, in a *catena* of decisions, held that if the dealer establishes payment of tax at the time of purchase, then, there is no power for the authority concerned to revoke the input tax credit on the ground that the selling dealer has not paid tax.

4. The learned Additional Government Pleader appearing for the respondent, on verification, would submit that as on date, no notice has been issued to the petitioner, before the impugned notices have been issued and therefore, the impugned notices can be treated as show cause notice and the petitioner may be directed to give explanation for the same and thereafter, the authority concerned will consider the same and pass appropriate orders on merits and in accordance with law.

5. In such view of the matter, the impugned notices dated 16.12.2014 are set aside and the petitioner is directed to treat the impugned notices as show cause notice, give explanation for the same and thereafter, on receipt of explanation from the petitioner, the authority concerned will consider the same and pass appropriate orders, after affording sufficient opportunity to the petitioner and taking into consideration of the decisions rendered by this Court.

6. The Writ Petitions are allowed as indicated above. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(Crl.Side)

/True copy/

Sub Assistant Registrar

NB

To
The Assistant Commissioner [CT]-3 [FAC],
Virudhunagar Assessment Circle,
Virudhunagar.

+1cc to Special Government Pleader Sr NO. 4429

+2cc to MR.R.D.GANESAN, ADVOCATE IN SR NO.

COMMON ORDER MADE IN
W.P.(MD)Nos.1024 and 1025 of 2015
29.01.2015

RG.14.02.2015 2P.4C.