IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2016

CORAM

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.Nos.12876 & 12877 of 2016
and W.M.P.Nos.11299 & 11300 of 2016

Tvl.Spantha Traders,
rep by its Proprietor R.Pradeep Kumar
19, Erunkencherry High Road,
Vyasarpadi,
Chennai - 600 039. ... Petitioner in both W.Ps

Vs.

1.The State of Tamil Nadu
rep by its Secretary to Government,
Department of Commercial Taxes,
Fort St.George, Beach Road,
Chennai - 600 009.

2.The Commissioner of Commercial Taxes,
2nd Floor, Elilagam, Chepauk,
Chennai - 600 005.

3.The Commercial Tax Officer - 11,
Chennai Enforcement Wing Central,
Group No.III,
C.T. Buildings, Greams Road,
Chennai.

4.The Assistant Commissioner (CT),
Sembium Assessment Circle,
Station: Kolathur,
Chennai - 600 099. ... Respondents in both W.Ps

Petitions filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records relating to the proceedings in TIN No.:33681045426/2014-15, 2013-14 dated 30.12.2015 received by the petitioner on 21.03.2016 passed by the 4th respondent and to quash the same and to direct the 4th respondent to refund the advance tax of Rs.1,44,000/- and compounding fee Rs.2,000/- totally Rs.1,46,000/- collected from the petitioner during the course of inspection on 26.12.2014.

For Petitioner : Mr.A.S.Mujibur Rahman
(in both W.Ps)

For Respondents: Mr.S.Kanmani Annamalai,
(in both W.Ps) Additional Government Pleader (Tax)

COMMON ORDER

The petitioner has filed the above Writ Petitions to issue writs of certiorarified mandamus to call for the records relating to the proceedings in TIN No.:33681045426 for the assessment years 2014-15, 2013-14 dated 30.12.2015 passed by the 4th respondent and to quash the same and to direct the 4th respondent to refund the advance tax and compounding fee of Rs.1,46,000/- collected from the petitioner during the course of inspection on 26.12.2014.

2.The learned counsel for the petitioner submitted that the 4th respondent had passed the impugned orders dated 30.12.2015 without giving an opportunity of personal hearing to the petitioner, which is violative of principles of natural justice. The learned counsel further submitted that since the mandatory provisions of Section 22(4) of the TNVAT Act was not followed, the impugned orders are liable to be set aside.

3.Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Tax) taking notice for the respondents submitted that since the 4th respondent has not given an opportunity of personal hearing to the petitioner, which is mandatory under the Act, the impugned orders may be set aside and the 4th respondent may be directed to decide the matter afresh, after affording due opportunity of personal hearing.

4.Having regard to the submissions made by the learned counsel on either side, since the 4th respondent had not followed the provisions of the Act, which is violative of principles of natural justice, the impugned orders dated 30.12.2015 are liable to be set aside. Accordingly, the same are set aside. The matter is remitted back to the 4th respondent for fresh consideration. The petitioner is at liberty to raise all the issues before the 4th respondent. The 4th respondent is directed to decide the matter afresh, taking into consideration the objections raised by the petitioner and after affording due opportunity of personal hearing to the petitioner.

5.With these observations, the Writ Petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
State of Tamil Nadu,
Department of Commercial Taxes,
Fort St.George, Beach Road,
Chennai - 600 009.

2.The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk,
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Group No.III,
C.T. Buildings, Greams Road,
Chennai.

4.The Assistant Commissioner (CT),
Sembium Assessment Circle,
Station: Kolathur,
Chennai - 600 099.

+1cc to Mr.A.S.Mujibur Rahman, Advocate, S.R.No.21861
+1cc to the Government Pleader, S.R.No.22243

W.P.Nos.12876 & 12877 of 2016
and W.M.P.Nos.11299 & 11300 of 2016

sr(CO)
srg(25/04/2016)