IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 12.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.Nos.33517 to 33521 of 2015 and
M.P.No.1 of 2017 in W.P.Nos.33517 to 33521 of 2015

M/s.Solar Tea Traders
Represented by its Proprietor,
No.205, Sivasubramaniam Road,
R.S.Puram East,
Coimbatore - 641 002. ... Petitioner in all W.Ps

Vs

The Assistant Commissioner (CT),
R.S.Puram (East) Circle,
Coimbatore. ... Respondent in all W.Ps

Prayer in W.P.No.33517 of 2015:- Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the respondent in the impugned order TIN:33051942295/2006-07 dated 14.09.2015 and quash the same as it is violative of the direction of this Court in W.P.No.9148 - 9150 of 2013 dated 08.04.2013; violative of Section 22, Section 27 of the TNVAT Act, 2006 Circular No.7/2014 (BB1/3589/2014) dated 03.02.2014 issued by the Commissioner of Commercial Taxes and against the principles of natural justice and further direct the respondent to pass orders in accordance with law after considering the reply filed by the petitioner and after granting personal hearing.

Prayer in W.P.No.33518 of 2015:- Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the respondent in the impugned order TIN:33051942295/2007-08 dated 14.09.2015 and quash the same as it is violative of the direction of this Court in W.P.No.9148 - 9150 of 2013 dated 08.04.2013; violative of Section 22, Section 27 of the TNVAT Act, 2006 Circular No.7/2014 (BB1/3589/2014) dated 03.02.2014 issued by the Commissioner of Commercial Taxes and against the principles of natural justice and further direct the respondent to pass orders in accordance with law after considering the reply filed by the petitioner and after granting personal hearing.

Prayer in W.P.No.33519 of 2015:- Writ petition filed under

Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the respondent in the impugned order TIN:33051942295/2008-09 dated 14.09.2015 and quash the same as it is violative of Section 22, Section 27 of the TNVAT Act, 2006 Circular No.7/2014 (BB1/3589/2014) dated 03.02.2014 issued by the Commissioner of Commercial Taxes and against the principles of natural justice and further direct the respondent to pass orders in accordance with law after granting personal hearing.

Prayer in W.P.No.33520 of 2015:- Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the respondent in the impugned order TIN:33051942295/2009-10 dated 14.09.2015 and quash the same as it is violative of the direction of this Court in W.P.No.9148 - 9150 of 2013 dated 08.04.2013; violative of Section 22, Section 27 of the TNVAT Act, 2006 Circular No.7/2014 (BB1/3589/2014) dated 03.02.2014 issued by the Commissioner of Commercial Taxes and against the principles of natural justice and further direct the respondent to pass orders in accordance with law after considering the reply filed by the petitioner and after granting personal hearing.

Prayer in W.P.No.33521 of 2015:- Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the respondent in the impugned order TIN:33051942295/2010-11 dated 14.09.2015 and quash the same as it is violative of Section 22, Section 27 of the TNVAT Act, 2006 Circular No.7/2014 (BB1/3589/2014) dated 03.02.2014 issued by the Commissioner of Commercial Taxes and against the principles of natural justice and further direct the respondent to pass orders in accordance with law after considering the reply filed by the petitioner and after granting personal hearing.

For Petitioner in all W.Ps	:	Mrs.Radhika Chandrasekar for M/s.K.Vaitheeswaran
For Respondent in all W.Ps	:	Mr.K.Venkatesh, Government Advocate (T)

COMMON ORDER

Heard Mrs.Radhika Chandrasekar, learned counsel appearing on behalf of Mr.K.Vaitheeswaran, learned counsel for the petitioner and K.Venkatesh, learned Government Advocate (Taxes) appearing for the respondent.

2.In these writ petitions, the petitioner has sought for issuance of writ of certiorarified mandamus to quash the assessment orders under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the TNVAT Act) and to direct the respondent to pass orders in accordance with law after considering the reply filed by the petitioner and grant them personal hearing.

3.The petitioner is a registered dealer on the file of the respondent under the provisions of the TNVAT Act and Central Sales Tax Act 1956 (hereinafter referred to as the "CST Act"). The place of business of the petitioner was inspected by the Officers of the Enforcement Wing on 06.12.2010 and during inspection, the records of the Health Inspector, Bangalore Taluk, Tiptur, Karnataka; the judgment of this Court in Crl.A.No.843 of 2006 dated 07.11.2006 and the letter of Food Inspector (PFA) Taluk Health Office, Tiptur were perused. Pursuant to such inspection, a report was submitted by the Officers of the Enforcement Wing which paved way for issuance of revision notices dated 14.12.2012 for the relevant assessment years to the petitioner. By the said notices, the respondent proposed to treat the said transaction as one sale of adulterated Tea and also proposed to tax at 12.5%.

4.The petitioner without submitting reply to the said notices, filed a batch of writ petitions before this Court in W.P.Nos.9148 to 9150 of 2013, challenging the said notices. The said writ petitions were disposed of by order dated 08.04.2013 thereby directing the petitioner to file objections to the said said notices, within a period of two weeks from the date of receipt of a copy of such order and the respondent was directed to consider the same and to pass appropriate orders after giving opportunity of hearing the petitioner, within a period of four weeks from the date of receipt of objection and till such time, the parties were directed to maintain status quo. Pursuant to the said order, the petitioner filed his objections on 25.06.2013 contending that he has absolutely nothing to do with the said transaction pertaining to the sale of adulterated Tea and no prosecution has been initiated against the petitioner under the provisions of the Prevention of Food Adulteration Act, etc. The petitioner also reiterated the directions issued by this Court and requested for a personal hearing.

5.It is not in dispute that before passing the impugned assessment orders, no personal hearing was afforded to the petitioner. This is not only evident from the impugned notices as there is no such reference nor there is any document to show that personal hearing was afforded to the petitioner.

Therefore, to that extent, the petitioner was justified in his contention.

6.The second contention of the learned counsel for the petitioner is on the ground of violation of principles of natural justice as no pre-revision notices were issued to the petitioner for the assessment years 2009-2010 and 2010-2011. This contention has not been refuted by the respondent by filing a counter.

7.Inspite of such a specific plea having been raised by the petitioner, in the affidavit filed in support of the writ petitions, the respondent should bear in mind that if the petitioner is a party to the production of adulterated Tea and if the competent authority to take a decision on the aspect of food adulteration then, the respondent should disclose such material to the petitioner and thereafter should complete the assessment. The petitioner's case is that till date, he has not been prosecuted under the provision of Food Adulteration of Act. If that be the case, the respondent should pass appropriate orders clearly indicating as to how the petitioner is to be made liable to pay the proposed tax @ 12.5% based on the orders of the public notices viz., report of public analysist, Guindy, Chennai; report of Chief Health Inspector, South Western Railway Hospital, Bangalore dated 13.03.2007; Lr.No.PFA/LHA/TPR/67/2007-08, dated 07.01.2008 of Taluk Health Officer, Tiptur, Karnataka; Lr.of Director, Central Food Laborator, Pune; High Court Judgement CRLA.No.843/2006, dated 07.11.2006; Letter of the Local Health Authority, Viralimalai Block, Pudukottai Dist and report of the Food Inspector (PFA) Taluk Health Officer, Tiptur Taluk in PFA/LHA/TPR/67/2007-08 dated 07.01.2008. However, in the impugned proceedings, the respondent has not elaborated upon the said issues as to how the petitioner should be made liable on account of the proceedings initiated by the other authorities other than the assessment officer. Since, there are inherent defects in the manner in which the assessment has been completed, this Court is of the firm view that the assessment should be re-done.

8.Accordingly, instead of setting aside the impugned proceedings/assessment orders, the petitioner is directed to treat the same as show cause notices and submit their further objections, within a period of three weeks from the date of receipt of a copy of this order. After receipt of the objections, the respondent shall fix the date for hearing the petitioner in person and if the respondent is of the view that he has to call for documents from the other authorities he may do so and give copies of the same to the petitioner and afford further opportunity to the petitioner to submit their further objections and after comprehensively hearing the matter, pass fresh orders of assessment in accordance with law. Till such time, no coercive action shall be initiated against the petitioner. The writ petitions are ordered accordingly. No cost. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jbm

To
The Assistant Commissioner (CT),
R.S.Puram (East) Circle,
Coimbatore.

1 cc to Mr.K.Vaitheeswaran, Advocate, sr.52077
1 cc to The Special Government Pleader(T), sr.51882

W.P.Nos.33517 to 33521 of 2015

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kra 06.10.2016