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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.08.2016

CORAM

THE HONOURABLE **MR.JUSTICE T.RAJA**

W.P(MD).No.14496 of 2016
and
W.M.P(MD)No.10744 of 2016

Balaji Cartons
rep. By its' Partner
V.Nagaraj
144, Muthu Nagiyapuram
Peria Poolam Patti Post,
Peraiyur 626 705
Madurai District. ... Petitioners

Vs.

The Assistant Commissioner of
Commercial Taxes,
Thirumangalam,
Madurai. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Certiorarified Mandamus to call for the records on the file of the respondent herein in TIN 3327 5041809/2014-15, dated 30.06.2016 and quash the same as illegal, in valid, without jurisdiction and in violation of the principles of natural justice, and consequently, direct the respondent to grant a copy of the assessment proposals (D3 proposal) of the Enforcement Wing for 2014-15 and after granting to the petitioner an opportunity to submit reply and a personal hearing, pass orders according to law.

For petitioner : Mr.M.Azeem

For respondents : Mr.R.Karthikeyan
Addl. Govt. Pleader

O R D E R

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M/s.Balaji Cartons rep. by its Partner, V.Nagaraj has filed the present writ petition questioning the correctness of the order passed by the respondent Assistant Commissioner of Commercial Taxes, Thirumangalam, Madurai, in TIN-3327 5041809/2014-15, dated 30.06.2016, wherein, on the basis of the surprise inspection made on 30.12.2014 under Section 65 of the Tamil Nadu Value Added Tax Act and D3 proposal, the respondent proceeded implement the proposal.

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2.Learned counsel for the petitioner would submit that, without giving a copy of the D3 proposal, a pre-revision notice alone was issued on 06.11.2015, therefore, the petitioner, in the individual letter dated 20.11.2015, sought for time and also for furnishing a copy of the D3 proposal sought to be implemented. But, without providing a copy of the D3 proposal, prepared by the Enforcement Wing, who conducted a surprise inspection on 30.12.2014 under Section 65 of the Act, the respondent passed the present impugned order, as a result, the petitioner has been denied a fair and reasonable opportunity, he pleaded.

3.It is the further contention of the learned counsel for the petitioner that when the assessment made under Section 22(2) of the TNVAT Act same was finalised on 31.10.2015, indicating the reported total and taxable turnover at Rs.89,24,862/-, the respondent, in gross violation of the principles of natural justice, without issuing a copy of the D3 proposal made by the Enforcement Wing on 30.12.2014, proceeded to implement the same. According to him, when the respondent issued the pre-revision notice on 06.11.2015, adopting the proposal to levy a penalty under Section 27(3) of the Act, at least on a request letter, dated 20.11.2015 by the petitioner, seeking supply of a copy of the D3 proposal, they should have furnished a copy thereof before proceedings further. But in the present case, the Assessing Officer despite well knowing the fact that the petitioner is prompt in reporting the turnover and paying the tax therefor regularly for all the previous assessment years, unfairly passed the final order without even providing a copy of the D3 proposal.

4. It is seen from the impugned order that the petitioner was issued with the pre-revision notice dated 06.11.2015 calling upon him to show cause as to why the proposed penalty cannot be confirmed. That being so, having taken a stand in the pre-revision notice that the respondent is going to implement D3 proposal of the Enforcement Wing, they ought not to have proceeded further without serving a copy of the proposal to the petitioner, thus, there is a clear violation of the principles of natural justice, hence, the impugned order is liable to be set aside, accordingly, it is set aside. However, liberty is given to the respondent to proceed further after issuing a copy of the D3 proposal prepared by the Enforcement Wing on 30.12.2014 under Section 65 of the Act.

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5. With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar

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To

The Assistant Commissioner of
Commercial Taxes,
Thirumangalam,Madurai.

+1 cc to M/S.M.Azeem, Advocate in SR.No. 43283/16

skn
CSL/PV/12.09.2016: 3p/3c

W.P(MD).No.14496 of 2016

10.08.2016