IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.04.2017

CORAM

THE HONOURABLE MR.JUSTICE RAVICHANDRABAABU

W.P.No.42014 of 2016
and
W.M.P.No.35956 of 2016

M/s. Deepak Fertilizers & Petro Chemical
Corporation Limited
represented by Suparas Jain,
Associate Vice President (Corporate -Finance),
7, 28th Cross, Phase X,R.K.road,
Hosur - 635 109. ... Petitioner

vs.

The Assistant Commissioner (CT),
Hosur(South),
Hosur. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the files of the respondent in CST.944955/2015-16 dated 19.9.2016 received on 21.10.2016 and quash the same as being violative of principles of natural justice and contrary to Section 22(2) of the Tamil Nadu Value Added Tax Act .

For Petitioner : Mr.C.Venkatraman

For Respondent : Mr.K.Venkatesh,
Government Advocate

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O R D E R

The petitioner is aggrieved against the order of assessment dated 19.09.2016 in respect of the assessment year 2015-16.

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2. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondent.

3. The main grievance of the petitioner in this writ petition is that the order of assessment was passed in violation of the principles of natural justice since the show cause notice and order of assessment was served on the petitioner on the same day, namely, 20.01.2016. The petitioner has specifically stated in the affidavit filed in support of the writ petition that they were not served with any show cause notice earlier to the service of the order of assessment, even though the show cause notice was dated as 11.08.2016.

4. The respondent filed a counter affidavit wherein it is contended that the petitioner is taking advantage of the non-mentioning of the date of receipt of the show cause notice at the time of serving the same.

5. Learned Government Advocate produced the file before this Court. A perusal of the file would show that there is no indication or proof as to on what date the show cause notice was served on the petitioner, even though the said notice was dated as 11.08.2016. The respondent has not chosen to serve the said notice through any other mode except the alleged personal service. When the petitioner has specifically asserted the non service of the show cause notice before the service of the order of assessment, it is the bounden duty of the respondent to prove such service on the petitioner. The above stated facts and circumstances and perusal of the file would show that the respondent has failed to discharge such onus. Therefore, this Court is left with no other option except to accept the contention of the petitioner that the show cause notice was not served before passing the order of assessment. Consequent conclusion would be that the order of assessment was passed by violating the principles of natural justice. Thus, the writ petition is allowed and the impugned order of assessment is set aside and the matter is remitted back to the respondent for issuing fresh notice to the petitioner and to pass the assessment order after hearing the petitioner in person and considering their objections as well. It is made clear that this Court is not expressing any view on the merits of the assessment, since this Writ Petition is allowed only on the ground of violation of principles of natural justice. The entire exercise shall be done by the respondent within a period of eight weeks from the date of receipt of a copy of this order.

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No costs. Consequently, connected miscellaneous petition is closed.

-Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

To
The Assistant Commissioner (CT),
Hosur(South),
Hosur.

+ 1 cc to Mr.C.Venkatraman, Advocate Sr.No. 19517
+ 1 cc t Special Government Pleader Sr.No.19752

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