BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.07.2020**

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P(MD)Nos.7512, 7514 and 7519 of 2020

and

W.M.P(MD)Nos.6995, 6997, 7006 and 7007 of 2020

M.Ayyar ... Petitioner in W.P(MD)No.7512 of 2020
P.Balachandran ... Petitioner in W.P(MD)No.7514 of 2020
S.Balamurugan ... Petitioner in W.P(MD)No.7519 of 2020

Vs.

The District Manager,
Madurai (South),
Tamil Nadu State Marketing Corporation(TASMAC),
Kappalur, Madurai,
Madurai District. ... Respondent in all W.Ps

CMMON PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records from the respondent in his proceedings in ந.க.எண்.825/2020/இ dated 21.05.2020 & 17.06.2020 and quash the same.

(In all W.Ps)

For Petitioners : Mr.N.Sathish Babu
For Respondent : Mr.H.Arumugam,Standing Counsel

COMMON ORDER

Mr.H.Arumugam, learned standing counsel takes notice on behalf of the respondent.

2. By consent, these writ petitions are taken up for disposal at the admission stage itself.

3. The prayer sought for in these writ petitions is for a Writ of Certiorari to call for the proceedings of the respondent in Na.ka.No.825/2020/E dated 21.05.2020 and 17.06.2020 and quash the same.

4. Heard Mr.N.Sathish Babu, the learned counsel appearing for the petitioners, who would submit that the respondent has passed an order on 21.05.2020 seeking for recovery of money for the alleged loss sustained by the TASMAC from the petitioners, following which, subsequently a show-cause notice has been issued by the respondent on 17.06.2020, where instead of asking explanation to the show-cause notice, the respondent pre-determined the issue as if the petitioners have accepted their guilt and paid the penalty or recovery amount and therefore, such a preconceived notion cannot stand in the way to decide the issue pursuant to the impugned show-cause notice. Therefore, even though the show-cause notice is

styled as such, in effect it is a final order as there is a preconceived notion in the said order. Therefore, on the said ground, the impugned show-cause notice is challenged.

5. However, Mr.H.Arumugam, the learned standing counsel appearing for the TASMAC would submit that the earlier order dated 21.05.2020 has already been withdrawn by a subsequent circular dated 22.06.2020 as the said order was issued without issuing show-cause notice or without giving opportunity of being heard to the petitioners. After the earlier order was withdrawn, subsequently, the present show-cause notice dated 17.06.2020 has been issued. Therefore, the petitioners need not challenge the earlier order dated 21.05.2020.

6. The learned standing counsel appearing for the respondent would further submit that insofar as the impugned show-cause notice dated 17.06.2020 is concerned, it is not issued on any preconceived notion on the part of the respondent. In the show-cause notice, only the past happenings have been narrated and accordingly, in the penultimate paragraph of the show-cause notice, explanation has been called for from the petitioners as to why 50% penalty with 24% interest with GST shall not be imposed against the petitioners for recovery of the loss of the IMFL materials in the shop where the petitioners were in-charge and seven days time was also given to the petitioners to give explanation. Therefore, it can only be treated as show-cause notice not as pre-determined order. Therefore, the said contention raised by the petitioner cannot be countenanced, the learned counsel contended.

7. I have considered the submissions made on both sides and perused the materials placed before this Court including the impugned show-cause notice.

8. As has been rightly pointed out by the learned standing counsel appearing for the respondent the impugned show-cause notice dated 17.06.2020 can only be construed as a show-cause notice. Whatever is stated in the show-cause notice can only be taken as narration of facts and it cannot be construed that the petitioners have already accepted their guilt and paid the penalty and what is the past happenings as recorded in the show-cause notice cannot stand in the way to decide and determine the issue in question. The case of the petitioners can be considered independently, of course, based on the explanation to be given by the petitioners.

9. If at all the petitioners are having any grievance over what has been stated in the show-cause notice, proper explanation can be given in this regard and once such explanation is given, based on such explanation only, the issue can be decided by the respondent independently and not based on any preconceived notion or predetermined issue as has been allegedly recorded in the impugned notice.

10. In such view of the matter, this Court feels that the impugned notice cannot be questioned. But, at the same time, the apprehension raised by the petitioners can be taken care of. Resultantly, these writ petitions are disposed of with the following order:

> "That the petitioners are directed to give explanation to the show-cause notice dated 17.06.2020 within a period of ten days from today. In the said explanation, the petitioners can state pointwise answer and explanation as to the queries raised by the respondent through the show-cause notice. Once the petitioners given explanation within the time, the same shall be considered objectively and independently and the respondent shall decide the issue only based on the available records as well as the explanation to be given by the petitioners alone and not based on any preconceived notion as such preconceived notion shall not stand in the way to independently decide the issue purely based on the explanation to be given by the petitioners. The needful as indicated above shall be done by the respondent after receipt of explanation from the petitioners within ten days and final order shall be passed within thirty days thereafter."

No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Deputy Registrar (Accounts)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:
The District Manager,Madurai (South),
Tamil Nadu State Marketing Corporation(TASMAC),
Kappalur, Madurai,Madurai District.

Pm

Order made in
W.P(MD)Nos.7512, 7514 and 7519 of 2020
Dated:**13.07.2020**

SMA/06/08/2020/3P/2C