IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.3.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.7811 of 2015

and MP.Nos 1 and 2 of 2015

M/s.Akshaya Traders ...Petitioner
rep by its proprietor -A.Rajamani

Vs.

The Assistant Commissioner (CT)
Villupuram - II, Villupuram ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorari calling for the records on the file of the respondent in its impugned proceedings made in TIN No.33134702192/2012-2013 dated 18.2.2015 and quash the same.

For Petitioner :Mrs.R.Hemalatha

For Respondents :Mr.V.Haribabu
Additional Government Pleader

O R D E R

The petitioner has come forward with the above writ petition to quash the proceedings dated 18.2.2015 passed by the respondent.

2. The petitioner is a dealer and assessee on the file of the Assistant Commissioner (CT), Villupuram - II, Villupuram. The petitioner has filed monthly returns in Form I. The respondent has issued a notice dated 22.1.2014 proposing to levy penalty. Challenging the same, the petitioner has filed petition under Section 84 of the TNVAT Act 2006 to rectify the error for which, the respondent passed the impugned proceedings. Challenging the same, the petitioner is before this Court.

3. The learned counsel for the petitioner submitted that the petitioner was not given an opportunity of personal hearing before passing the impugned order. It is submitted by the learned counsel, when the respondent has passed best judgment order under Section 22 (4) of TNVAT Act, 2006, reasonable opportunity of being heard should be given to the petitioner. According to the learned counsel mandatory provision of Section 84 of the TNVAT Act has not been complied with by the respondents before passing the impugned order. Therefore, the learned counsel prays that the writ petition has to be allowed.

4. Per contra, the learned Additional Government Pleader submitted that there is no need for personal hearing when there is no enhancement of assessment. According to the learned Additional Government pleader, Section 84(1) of the TNVAT Act will apply only for enhancement of assessment.

5. I have heard the submission made by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents and perused the materials available on record.

6. I find there is some force in the contention of the learned Additional Government Pleader appearing for the respondent. Admittedly, when there is no enhancement as against the original order, there is no need for giving an opportunity of personal hearing. In this context, it is useful to extract Section 84 (1) of the Act, which reads thus:-

> Section 84 (1) An assessing authority or an appellate or revising authority (including the Appellate Tribunal) may, at any time within five years from the date of any order passed by it, rectify any error apparent on the face of the record:
>
> Provided that no such rectification which has the effect of enhancing an assessment or any penalty shall be made unless such authority has given notice to the dealer and has allowed his reasonable opportunity of being heard. "

On a reading of Section 84 (1), is very clear that there is no need for giving an opportunity of personal hearing to the petitioner, if the original order is going to be confirmed. Only if rectification, which has the effect of enhancing the assessment or penalty, the petitioner shall be given an opportunity.

7. Admittedly, the petitioner has not questioned the original order. Therefore, the contention of the petitioner that the opportunity was not given by the authority cannot be gone into in this writ petition as the petitioner has not challenged the original order. That apart, the petitioner has got a remedy of revision under Section 54 of the Act.

8. In view of such circumstances, I am not inclined to accept the contention of the petitioner. The writ petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

The Assistant Commissioner (CT)
Villupuram - II, Villupuram

+1 cc to Spl.Government Pleader,(T)SR.15808.

+1 cc to Mrs.R.Hemalatha, Advocate,SR.15474.

msm(co)
krd 1/4

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