IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.9763 of 2015
and M.P.No.1 of 2015

Acer India (P) Ltd.,
83/1 Thiruneermalai Road,
Nagelkeni, Chennai - 600 044. ... Petitioner

Vs

1. The Assistant Commissioner (CT)
Pammal Assessment Circle No.32 & 33
Sripuram 2nd Street,
Chromepet Chennai-
600044

2. Commissioner of Commercial Taxes,
Chepauk, Chennai-600005

3. Government of Tamil Nadu
Rep.by its Secretary,
Commercial Taxes Department,
Fort St. George,
Chennai - 600 009. ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the 1st respondent in CST CST/770021/2012-13 dated 6.3.2015 quash the same to the extent it is prejudicial to the petitioner i.e. in not considering the supporting documents related to export and high sea sales submitted by the petitioner and in not granting the benefit of exemption to exports and high sea sales and consequently direct the 1st respondent to afford the petitioner an opportunity of personal hearing decide the matter on merits after taking into consideration the documents and submissions of the petitioner.

For Petitioner : Mr.R.Parthasarathy
for M/s. Lakshmi Kumaran & Sridharan

For Respondent : Mr.Kanmani Annamalai, Govt. Advocate

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O R D E R

The petitioner has come forward with this writ petition challenging the order of the respondent dated 06.03.2015.

2. The only point canvassed in this writ petition was that the petitioner was not given an opportunity before passing the impugned order.

3. The learned Government Advocate submitted that the respondent has no objection for giving personal hearing to the petitioner in the month of May, 2015 and thereafter, a time limit may be fixed for passing final orders.

4. In the decision of the Hon'ble Apex Court reported in 14 TNCTJ 220 (DB) (Tvl.SRC Projects Pvt. Ltd., Vs. The Commissioner of Commercial Taxes and another), the Hon'ble Apex Court has held that when there is a revisional assessment, there should be a reasonable opportunity to the assessee and if the same is not given, the order will have to go. As far as the case in hand is concerned, an opportunity of personal hearing was not given to the petitioner before passing the impugned order. Hence, I am of the view that the same is liable to be set aside and the matter has to be remitted to the Authority concerned for passing fresh orders, after affording a reasonable opportunity to the petitioner.

5. Taking note of the decision of the Hon'ble Apex Court cited supra, leaving open all the points to be raised before the Authority concerned by the petitioner, I set aside the impugned order dated 06.03.2015 passed by the respondent only on the ground that no opportunity has been given to the petitioner. The petitioner is directed to appear before the Authority concerned on 15.05.2015, on which date, he is entitled to make his verbal and written submissions, if any and also file documents in support of his contention. In case the petitioner fails to avail this opportunity on 15.05.2015, it is open to the Authority to pass orders on merits based on the available records and also taking into account the documents to be submitted by the petitioner, within a period of four weeks thereafter. However, this Court makes it clear that if the petitioner fails to avail the opportunity, he should not contend that no opportunity is given.

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6.This writ petition is disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

smi

s/d-
Assistant Registrar(V)

True Copy

Sub-Assistant Registrar

To

1. The Assistant Commissioner (CT)
Pammal Assessment Circle No.32 & 33
Sripuram 2nd Street, Chromepet, Chennai- 600044

2. Commissioner of Commercial Taxes,
Chepauk, Chennai-600005

3. The Secretary, Government of Tamil Nadu
Commercial Taxes Department, Fort St. George,
Chennai - 600 009.

+ 1 cc to Special Govt.Pleader (Taxes) High Court, Madras SR 18674

rsk(co)
prk21/4

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