IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2016

CORAM:

THE HON 'BLE MR. JUSTICE T.S.SIVAGNANAM

Writ Petition No.39636 of 2015

& M.P.Nos.1 to 2 of 2015

M/s. Akshaya Traders,
Rep. By its Proprietor, A.Rajamani,
No.6/20 Varadharajan Lay Out,
Poonthottam, Villupuram - 605 602 ... Petitioner

Versus

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

Prayer:- Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari to call for the records on the file of the respondent, in its impugned proceedings made in TIN No.33134702192/2012-13, dated 28.08.2014 and to quash the same.

For Petitioner : Mrs. R.Hemalatha

For Respondent : Mr. S.Kanmani Annamalai, A.G.P.,

O R D E R

Heard Mrs.R.Hemalatha, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, appearing for the respondents. By consent of the learned counsel for both sides, the writ petition is taken up for final disposal.

2. The petitioner-company is before this Court for the second time. With respect to the assessment for the year 2012-13, under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter will be referred to as “the Act), earlier, the petitioner came before this Court, challenging an order passed by the respondent, rejecting the petitioner's application filed under Section 84 of the Act, in W.P.No.7811 of 2015. The Court found that the order passed by the Authority on the Rectification Petition is proper and there is nothing illegal about it and since the petitioner has not challenged the Original Assessment Order, no relief can be granted and accordingly, the writ petition came to be dismissed, by order, dated 19.03.2015. Now the petitioner is before this Court, challenging the assessment order.

3. On a perusal of the impugned assessment order, it is seen that the petitioner, though received the pre-assessment notice, did not file objections. Consequently, the respondent had no option except to confirm the proposal. Therefore, it is not a case where there is violation of principles of natural justice, but a case where the petitioner failed to avail the opportunity granted.

4. The learned counsel for the petitioner-company would submit that they have got an excellent case on merits and the revision of assessment has been done, solely, based on the report of the Enforcement Wing Officials, without any independent consideration of the facts of the case.

5. The Court is inclined to grant one more opportunity to the petitioner to go before the Assessing Officer, but, at the same time, the interest of the Revenue should be protected. Accordingly, the writ petition stands disposed of, by directing the petitioner to pay to the respondent 15% of the disputed tax, within a period of three (3) weeks from the date of receipt of a copy of this order and if such payment is made, the petitioner is entitled to treat the impugned assessment order as show cause notice and submit their objection(s) within a period of fifteen days therefrom; after which, an opportunity of personal hearing shall be granted and the assessment shall be re-done in accordance with law. If the petitioner does not comply with the condition, as imposed above, the benefit of this order will not enure to the petitioner and the writ petition would stand automatically dismissed, without any further reference to this Court. No costs. Consequently, the connected MPs are closed.

Sd/-
Asst. Registrar

/ true copy /

Sub Assistant Registrar

srk

To
The Assistant Commissioner (CT),
Villupuram - II, Villupuram

1 cc to Ms.R.Hemalatha, Advocate vide SR.No 58078
1 cc to Special Government Pleader (Taxes) vide SR.No.58245

W.P.No.39636 of 2015
& M.P.Nos.1 & 2 of 2015

GJ(CO)
CS 12/11/2016