IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2016

C O R A M

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

W.P.No.30707 of 2016 and
W.M.P.No.26604 of 2016

Mahaveer Trading Company,
Represented by its Partner,
Mrs.Sarita Saraf,
No.80, Greams Road,
Chennai - 600 006. .. Petitioner

Versus

The Assistant Commissioner (CT),
Nungambakkam Assessment Circle,
No.88, Mayor Ramanathan Road,
Chennai - 600 037. .. Respondent

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the impugned proceedings of the respondent passed in CST/635638/2013-14 dated 01.06.2016 and quash the same.

For Petitioner ... Mr.N.Murali
For Respondent ... Mr.S.Kanmani Annamalai
Additional Government Pleader

ORDER

Heard Mr.N.Murali, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepts notice on behalf of the respondent and with their consent, the Writ Petition itself is taken up for final disposal.

2.The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) and the Central Sales Tax Act, 1956 (CST Act). The order impugned in this Writ Petition is an order of assessment under the CST Act for the year 2013-2014. Admittedly, the petitioner did not file any objections to the pre-revision notice. Therefore, the petitioner cannot contend that there is any violation of principles of natural justice, since it is a case where the petitioner did not avail the opportunity granted to them by the Assessing Officer, the petitioner would contend that the claim exemption on sale of wheat as per notification No.2(i) CTR/12 (a-9)/2012 dated 27.03.2012 issued by the Government under Section 30 of the TNVAT Act and this claim for exemption was made in the monthly return and if the petitioner is given one opportunity to submit documents before the respondent, they would be able to establish the correctness of their submission. Further, the petitioner's case is that they did not do business for two years i.e. for the years 2014-2015 and 2015-2016 and therefore, they are even unable to generate even 10% of the amount as demanded in the impugned order.

3.Considering the contentions raised by the petitioner and taking of the fact that the petitioner has filed a petition before the respondent under Section 84 of the TNVAT Act on 22.08.2016, this Court deems it appropriate to direct the respondent to consider the said petition and the said petition should be considered by taking note of the stand taken by the petitioner, examine as to whether their claim for exemption as per notification is justified and if any documents are produced by the petitioner, the same shall also be examined. The above exercise shall be complied with by the respondent, after affording an opportunity of personal hearing to the petitioner, within a period of four weeks from the date of receipt of a copy of this order. Till then, no coercive action shall be initiated to recover the tax as notified in the impugned order dated 01.06.2016.

4.With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sgl

To

The Assistant Commissioner (CT),
Nungambakkam Assessment Circle,
No.88, Mayor Ramanathan Road,
Chennai - 600 037.

+1 cc to Mr.N.Murali Advocate sr 49903
+1 cc to Special Government Pleader Taxes sr 50132

W.P.No.30707 of 2016

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