IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.15912 of 2015
And
M.P.No.1 of 2015

J.Robert Raja [Petitioner]

Vs

The Assistant Commissioner (CT)
Trichy Road Circle Coimbatore [Respondent]

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus to call for the records on the file of the respondent herein in his TIN No.33511885103/ 2013-14 dated 25.3.2015 and quash the same and direct the respondent herein to consider the application dated 12.5.2015 along with the enclosures for rectifying the errors as provided under Section 84 of the VAT Act 2006.

For Petitioner : Mr.N.Inbarajan
For Respondents : Mr.Manoharan Sundaram, AGP(T)

O R D E R

Heard the learned Counsel for the petitioner and Mr.Manoharan Sundaram, learned Additional Government Pleader (Taxes), who takes notice for respondent and with their consent, the main writ petition itself is taken up for disposal at the stage of admission itself.

2. This writ petition is directed against the impugned order dated 25.03.2015 issued by the Assistant Commissioner (CT), Trichy Road Circle, Coimbatore.

3.1 The learned counsel for the petitioner inter alia would submit that the impugned order is liable to be set aside on the following grounds:-

(a) when there was no proposal to levy penalty in the notice dated 08.12.2014, the respondent ought not to have resorted to levy penalty invoking Section 27(3)(c) of the TANVAT Act, 2006;

(b) No personal hearing whatsoever was granted, although the petitioner had not filed a written reply to the notice dated 08.12.2014;

(c) When the application of the petitioner filed under Section 84 of the Act is pending consideration, a perusal of the which would disclose that the entire turnover has been properly explained, the respondent ought not to have passed the impugned order, reversing the ITC.

3.2 Reverting back to the ground raised by the learned counsel for the petitioner with regard to disposal of Section 84 application, he would submit that if the impugned order is kept in abeyance and ultimately if a direction is issued to the respondent to consider the pending petition filed under Section 84 of the TNVAT Act, that would serve the real purpose of coming to this Court to undo the prejudice occasioned to the petitioner in the impugned order.

4. Mr.Manoharan Sundaram, learned Additional Government Pleader (Taxes), on the other hand would submit that admittedly in the present case, the petitioner was issued with notice dated 08.12.2014, wherein the respondent has rightly expressed the action that is going to be taken by him in the event of non filing of reply, yet, the petitioner, has withheld from submitting his reply, resulting in passing of the impugned order and therefore, the petitioner has no locus standi to challenge the correctness of the order. Adding further, he would submit that the petition under Section 84 of the Act filed by the petitioner is also pending and therefore, as prayed for by the petitioner, if a direction is issued to consider and pass orders on the petition filed by the petitioner under Section 84 on merits and in accordance with law, that would take care of the grievance of the petitioner and there is no need to interfere with the impugned order.

5. As rightly contended by the learned Additional Government Pleader (Taxes) appearing for the respondent, this Court is not inclined to interfere with the impugned order passed by the respondent, since the petitioner has not filed any reply to the notice dated 08.12.2014. However, this Court findS force in the contention of the learned counsel for the petitioner with regard to non disposal of the petition filed under Section 84 of the Act.

6. A perusal of the notice dated 08.12.2014 shows that the respondent has not proposed to levy penalty under Section 27(3)(c) of the Act. While so, invoking Section 27(3)(c) of the Act, levying penalty, requires this Court to direct the respondent to consider the pending petition filed under Section 84 of the Act on merits and in accordance with law.

7. In view of the above, the respondent is directed to consider and pass appropriate orders on the rectification petition filed by the petitioner under Section 84 of the Act on merits and in accordance with law. Till such time, the impugned order shall not be enforced kept in abeyance. It is needless to mention that the petitioner shall be afforded with an opportunity of personal hearing before passing appropriate orders.

The writ petition is disposed of with the above direction. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT)
Trichy Road Circle Coimbatore.

+1cc to Mr.N. Inbarajan, Advocate, S.R.No.27314

+1cc to the Government Pleader, S.R.No.27179

AP(CO)
EU(03/08/2015)