IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2015

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.3238 of 2015
&
M.P.No.1 of 2015

Jene Agencies
72, Shasthiri Street,
Coimbatore-641 009,
Represented by its Proprietor ... Petitioner

Vs

The Assistant Commissioner (CT),
Ramnagar Circle,
Coimbatore. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the respondent in impugned order in TIN/3321982268/2014 dated 30.12.2014, quash the same as violative of Section 27 of the TNVAT Act, 2006 and violative of the principles of natural justice.

For Petitioner : M/s.Radhika Chandra Sekhar

For Respondent : Mr.Manohar Sundaram
Addl. Govt. Pleader (Tax)

O R D E R

Heard M/s.Radhika Chandra Sekhar, learned counsel for the petitioner and Mr.Manohar Sundaram, learned Additional Government Pleader (Taxes) appearing for the respondent. With the consent of both the parties, the writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner has received a notice dated 06.11.2014 stating that there is a proposal sent to the petitioner under Section

27 of the Tamil Nadu Value Added Tax Act 2006. The petitioner was asked to submit a reply within 10 days from the date of receipt of that notice, failing which orders will be passed by confirming the proposal apart from the imposition of penalty.

3. The petitioner did not give reply within 10 days. However, a reply dated 27.11.2014 has been sent by the petitioner, wherein one of the points raised by the petitioner is that there is already a deemed assessment and hence, the petitioner for re-assessment under Section 27 of the Tamil Nadu Value Added Tax Act 2006, does not arise. After receipt of the reply dated 27.11.2014, the respondent has passed the order dated 30.12.2014 stating that the tax at 14.5% on the turn over mentioned in the notice at Rs.1,83,155.001.8 lakhs was wrongly entered instead of Rs.18,31,554.00 and hence, the same has been corrected under Section 54 of the Tamil Nadu Value Added Tax Act, 2006.

4.According to the petitioner, Section 54 of the Tamil Nadu Value Added Tax Act, 2006, is not attracted to the facts and circumstances of the present case.

5.Per contra, learned counsel for the respondent submitted that the petitioner has not submitted the reply within the time stipulated and hence, the order has been passed. That apart, it is only a clerical or arithmetical error which could be corrected by the Authority and the respondent has invoked his power under Section 54 of the said Act as it is also a typographical error.

6.It is not in dispute that the reply dated 27.11.2014 was available when the impugned order dated 30.12.2014 was issued. It is no doubt that the respondent is empowered to make correction if there are any clarification or typographical error crept in the order. That apart, wrong quoting of provision of Act cannot be taken advantage by the petitioner to seek for setting aside the impugned order. However, this Courts finds that the petitioner has sent the reply dated 27.11.2014, and as it was not considered, the impugned order passed by the respondent is liable to be set aside as the petitioner was not given opportunity of being heard and that the petitioner has also sought for personal hearing. Hence, the impugned order is hereby set aside. The petitioner is directed to submit his objection treating the impugned order as notice on or before 04.03.2015 and also avail personal hearing on that date. In case, the petitioner fails to avail personal hearing and file objections, if any, along with documents, it is open to the Authority to pass appropriate orders on merits and in accordance with law.

7.With the above direction, the Writ Petition is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Deputy Registrar

/true copy/

Sub Deputy Registrar.

To

The Assistant Commissioner (CT),
Ramnagar Circle,
Coimbatore.

+1cc to the Special Government Pleader, S.R.No.7159
+1cc to Mr.K.Vaitheeswaran, Advocate, S.R.No.7051

W.P.No.3238 of 2015
&
M.P.No.1 of 2015

RJ(CO)
gp(26/02/2015)