BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :17.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P(MD)No.3711 of 2015
and
M.P.(MD).No.1 of 2015

John T.Mecteer ...Petitioner

Vs.

The Commercial Tax Officer,
Thuckalay,
Kanyakumari District. ...Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the respondent herein in TIN 33716164148/2009-10, dated 09.02.2015 and quash the same as illegal, arbitrary and in violation of the principles of natural justice and consequently direct the respondent to consider the reply of the petitioner, dated 28.04.2014 and pass fresh orders according to law, after granting to the petitioner an opportunity of personal hearing.

For Petitioner : Mr.M.Azeem
For Respondent : Mr.A.Muthukaruppan
Addl. Government Pleader

O R D E R

The Writ Petition is filed only on the ground that the impugned order was passed without taking into consideration the objection which has been given.

2. In fact, the order states that objection was not at all received, whereas the petitioner has given his written objection by registered post on 28.04.2014 which has been received on 30.04.2014. Acknowledgment card was also produced. In spite of the reply being pending, the authority has passed an order without considering his objection, which is in violation of the principles of natural justice. Therefore, his only contention is that the order is *per-se* illegal and to show his *bona fide,* he is prepared to pay 15% of the tax amount.

3. The learned Additional Government Pleader appearing for the respondent would contend that earlier he was granted time, but he did not file any reply. The reply was belated, but not considered. Therefore, the order cannot be called as totally illegal and it is only the irregularity and not illegality. But the fact remains that the authority has passed an order without taking into consideration the explanation of the petitioner. No doubt, the petitioner has sent the reply much belatedly, but on the date of passing of the order, the reply was received. In fact, the reply has been filed as early as on 30.04.2014 and the order was passed only on 09.02.2015. Therefore, the authority without considering the reply, passed an order which is *per se* illegal. In any way, to show his *bona fide,* the petitioner is willing to deposit 15% of the tax amount

as made in the order. Therefore, the petitioner will deposit 15% of the tax amount on or before 07.04.2015.

4. If the petitioner fails to deposit the amount within the above said period, the impugned order will not be set aside. On such payment, the authority will give one more opportunity of personal hearing to the petitioner and pass appropriate orders in accordance with law, considering the objection.

5. The Writ Petition is disposed of with the above direction. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar

To
The Commercial Tax Officer,
Thuckalay, Kanyakumari District.

+1CC to M/s.M.Azeem, Advocate in SR.13020
+1CC to the Special Government Pleader in SR.13218

W.P(MD)No.3711 of 2015
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