IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH

AND

THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

Writ Appeal No.1772 of 2017

and

C.M.P.Nos.22455 to 22457 of 2017

A.Lakshmipathy .. Appellant/Petitioner

Vs.

1.The State of Tamil Nadu,
rep.by the Secretary to Government,
Commercial Taxes Department,
Fort St.George,
Chennai-600 009.

2.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005. .. Respondents/Respondents

Appeal filed under Clause 15 of the Letters Patent, against the order passed by this Court dated 12.10.2017 in W.P.No.21952 of 2012. presented under article 226 of the constitution of India, praying for issuance of a writ of certiorari *calling for the records in respect of the Charge Memo issued by the 2nd respondent in Ref. No.CD2/23503/2010 dt 18.4.2012.*

For Appellant : Mr.P.Wilson, Sr.Counsel
for Mr.Richardson Wilson

For Respondents : Mrs.Narmada Sampath,
Addl.Advocate General, assisted by
Mr.Kanmani Annamalai,
Additional Government Pleader

JUDGMENT

(Judgment of the Court was delivered by
Huluvadi G.Ramesh, J.)

This writ appeal has been filed against the order passed by this Court dated 12.10.2017 in W.P.No.21952 of 2012.

2.The appellant approached this Court by filing a writ petition in W.P.No.21952 of 2012 seeking to quash the charge memo dated 18.04.2012 issued against the appellant, by the second respondent. After considering the matter in detail, the learned single Judge passed an order on 12.10.2017 dismissing the writ petition, holding that the charges are serious in nature and the same warrants a full-fledged enquiry and that no further adjudication is required on merits. Challenging the said order, the appellant is before this Court with this writ appeal.

3.The learned senior counsel appearing for the appellant has submitted that the learned single Judge has erred in dismissing the writ petition on the notion that a Writ Court cannot entertain a writ petition against a charge memo except on the limited grounds of mala fides and incompetence of the issuing authority. He further submitted that the case against one M.Venugopal, who has allegedly been permitted by the appellant herein to serve as a clerk / binder unauthorisedly at Harbour II Assessment Circle, relating to Charge No.1, has been dropped and hence continuing the disciplinary proceedings against the appellant on the basis of the action against the said M.Venugopal is arbitrary and illegal. He finally submitted that proper documents have not been supplied to the appellant before issuing the charge memo. Stating so, he prayed for quashing the charge memo.

4.The learned Addl.Advocate General appearing for the respondents has submitted that even though the documents may not have been made available at the relevant point of time, the same are available with the Department and there is no impediment for the Department to furnish copies of those documents to the appellant and the appellant can look into those documents.

5.We have heard the learned counsel on either side and perused the materials available on record.

6.We do not find any force in the contentions put forth by the learned senior counsel for the appellant. However, it appears that proper documents have not been furnished to the appellant before framing the charge memo. When we put forth this point before the learned Addl.Advocate General appearing for the respondents, she submitted that even though the documents may not have been made available to the appellant at the relevant point of time, the same are available with the Department and the Department is ready to furnish copies of those documents to the appellant and the appellant can look into those documents. Further, even in the counter affidavit filed by the respondents before the writ Court, it is clearly stated that the second respondent has no objection whatsoever for the appellant to peruse any of the files relating to his case. The relevant portion of the counter affidavit is extracted hereunder:

> "7.It is respectfully submitted that certain files have been taken by the Vigilance and Anti Corruption Department. With regard to those documents also, the 2nd respondent would permit the petitioner to inspect or to make copies if and when the same are given to the 2nd respondent by the Vigilance and Anti Corruption Department. Thus, the 2nd respondent has no objection whatsoever for the petitioner to peruse any of the files. It is respectfully submitted that the respondents have no objection whatsoever for the petitioner to inspect any of the files relating to his case or to make copies of the same which right is available to the petitioner under law."

7.In view of the above stated circumstances, the plea of the learned senior counsel for the appellant to quash the charge memo itself on the ground that some documents are not made available to the appellant, does not hold any water. This plea has been raised only to drag on the proceedings. Such dilatory tactics cannot be permitted. However, taking into consideration the entire facts and circumstances, the appellant is permitted to approach the authorities by way of making a representation seeking copies of documents as required by him, within a period of fifteen days from the date of receipt of a copy of this judgment. On such representation being made, the same shall be furnished either by the Vigilance and Anti-Corruption Department or by the Commissioner of Commercial Taxes, the second respondent herein, within a period of one month from the date of receipt of the representation, enabling the appellant to make further reply. Only after furnishing the required documents to the appellant as per law, the respondent Department shall proceed further with the disciplinary proceedings.

8.The writ appeal is disposed of accordingly. Consequently the connected miscellaneous petitions are closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

KM

To

1.The Secretary to Government,
Government of Tamil Nadu,
Commercial Taxes Department,
Fort St.George,
Chennai-600 009.

2.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

+1 CC to Special Government Pleader, High Court, Chennai
Sr.No.1177

W.A.No.1772of 2017
and
C.M.P.Nos.22455 to 22457
of 2017

SS(CO)
KP(30/01/2018)

04.01.2018