IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2015

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.No.15365 of 2015
MP.Nos.1 and 3 of 2015

M/s. KERN Logistics Private Limited
Rep.by its Authorised Prepresentative
M.A.Sumathi. ... Petitioner

Vs.

The Assistant Commissioner (CT)
Adyar Assessment Circle, Chennai-28 ... Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the Respondent in proceedings NO.Pdl 178/2014/A2, dated 27.03.2015 and to quash the same.

For Petitioner : Mr.K.V.Subramanian
SC for M/s.K.V.Subramanian Associates,

For Respondents : Mr.Manohanran Sundaram, AGP(Tax)

ORDER

The Petitioner has challenged the proceedings of the respondent dated 27.03.2015, cancelling the Registration Certificate of the Petitioner under the provisions of the Tamil Nadu Value Added Tax Act 2006.

2. The Petitioner is a registered dealer under the Tamil Nadu Value Added Tax Act 2006 and the CST Act 1956, holding TIN 33680962782 and CST No.799082. The Petitioner is engaged in the business of doing cold storage facilities for fruits and agricultural products and they are exempted from paying service tax and excise duty and accordingly, the Petitioner filed NIL Returns upto October 2013. However, the Respondent issued a notice to the Petitioner for non filing of the NIL Returns. Then, the Petitioner filed returns for the year 2013-2014 on 6.4.2015 and for the year 2014-2015 on 08.04.2015, which were accepted by the Respondent. While so, the Respondent passed the impugned order dated 27.3.2015, cancelling the Registration Certificate of the Petitioner on the ground that the Petitioner had not filed the return for the assessment year 2013-2014. Hence, the Petitioner has filed

this Writ Petition, assailing the impugned proceedings, contending that without giving a notice or opportunity of hearing to the Petitioner and without following the procedure for cancellation of registration, the Registration Certificate of the Petitioner was cancelled.

3. This court heard the learned counsel on either side and considered their submissions and also perused the materials placed on record.

4. According to the Respondent, the Registration Certificate of the Petitioner was cancelled on the ground that the Petitioner did not file the returns for the assessment year 2013-2014 within the due date, despite giving the information about the non filing of returns to the Petitioner and in spite of sending the notice dated 20.10.2014 to the Petitioner. But, according to the Petitioner, they had filed returns for the said assessment year and got acknowledgments from the Respondent and also filed the copies of the same in the additional typed set of papers. However, it is seen from the records that the Petitioner did not file the returns for the said assessment year within the due date and the Petitioner filed the returns belatedly. When the authority has jurisdiction to ignore such returns filed and proceed against the Petitioner in respect of non-filing of the returns, while taking recourse to the cancellation of registration, the provisions of law require that there must be a proper initiation of proceedings before a cancellation order was passed, by giving a notice to the Petitioner to show cause as to why registration should not be cancelled.

5. At this juncture, it is relevant to extract the provisions of Section 39 (13), 14) and (15) of the Tamil Nadu Value Added Tax Act, 2006, as under:-

> "39. Procedure for registration: -
>
> (13) A registered dealer shall be entitled to have his registration cancelled, if he is able to prove to the satisfaction of the prescribed authority that his turnover in each of the two consecutive years immediately preceding the application was less than the limit specified in section 3.
>
> (14) The authority granting the certificate of registration may, by order, for good and sufficient reasons to cancel, modify or amend any certificate of registration granted by it.
>
> (15) No application for registration or for a copy or duplicate of the certificate under this section shall be refused and no order under sub-section (14) shall be made, unless

the dealer concerned has been given an opportunity of being heard.”

6. In the case on hand, it is seen that there was no proper service of notice nor there was any opportunity of hearing given to the Petitioner before cancelling the registration certificate of the Petitioner and though it has been stated in the impugned proceedings that the dealer has received a notice on 20.10.2014, no proper acknowledgment for service of such notice or any notice is produced, besides there is no justification nor valid grounds to sustain the impugned proceedings of the Respondent. It is settled law that any order passed, without proper opportunity as per the provisions of the Act, vitiates the entire proceedings. Hence, on this ground, the impugned order is liable to be set aside and accordingly, it is set aside. The respondent is directed to reactivate the registration of the Petitioner. However, in view of the fact that the Petitioner did not file the returns for the assessment year in question within the due date, the Respondent is at liberty to initiate appropriate proceedings against the Petitioner, as regards the belated returns in a manner known to law.

7. With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected MPs are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

Srcm

To

The Assistant Commissioner (CT)
Adyar Assessment Circle, Chennai-28

+1 cc to Special Government Pleader, (Taxes), sr.65552

WP.No.15365 of 2015

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