IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.1572 of 2015
and
M.P.Nos. 1 and 2 of 2015

M/s. Unitech
rep by its Proprietor
Mr.Abdul Hameed
No.101, Angappa Naicken Street
Ground Floor, Shop No.5
Broadway
Chennai - 600 001 ... Petitioner

vs.

The Asst. Director General of Foreign Trade
O/o.ADGFT
4th Floor, Shastri Bhawan Annexure
Chennai - 600 006 ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the entire records pursuant to the order of cancellation of IEC No.0413004155 on the file of the respondent and quash the same.

For Petitioner : Mr.N.Chinnaraj

For Respondents : Mr.M.L.Ramesh
SPCCG

ORDER

Heard Mr.N.Chinnaraj, learned counsel for the petitioner and Mr.M.L.Ramesh, learned counsel appearing for the respondent.

2. The petitioner has filed this writ petition praying for issuance of writ of certiorari to quash the order of suspension of IEC No.0413004155 allotted to the petitioner by the Joint Director

General of Foreign Trade under the provisions of the Foreign Trade (Development & Regulation) Act, 1991.

3. From the impugned proceedings dated 30.10.2014, it is seen that the order of suspension was not passed by the respondent on their own volition and it was passed on account of the fact that they had some record to show that the petitioner had violated the terms and conditions of the licence. It is also alleged in the complaint that the petitioner has imported Air Conditioners valued at Rs.8,91,85,540/- and they have not filed their return and sold the imported consignment in Tamil Nadu evading the payment of sales tax. Further, it is stated that the petitioner concern is not in existence and is not doing any business activity in the registered place of business and evaded payment of sales tax to the State Government.

4. Based on the said communication given by the Sales Tax Department dated 22.07.2014, without causing any verification, the respondent mechanically passed the impugned order the suspended the licence of the petitioner. The allegation of the Sales Tax Department is factually not sustainable and they did not have sufficient records to show that there is violation of licence condition. In fact, they have also produced the original restricted licence. Further it is noteworthy to point out that the Sales Tax officials inspected the petitioner's place of business and sealed the same only on 28.07.2014. It is evident from the Notice issued from the Commercial Tax Officer, Rowing Squad-V, Enforcement (Central), Chennai-6 in IF 106/2014-15. It is not known as to on what basis the letter was sent by the Commercial Tax Department to the respondent on 22.07.2014 itself. In such circumstances, the order of suspension passed by the respondent without considering the petitioner's representation or without issuing notice to the petitioner and merely acting on the letter of the Commercial Tax Officer is not sustainable in law.

5. Further it is seen that the petitioner filed writ petition before this Court in W.P.No.33399 of 2014 against the Commercial Tax to quash the order dated 28.07.2014 passed by the Commercial Tax Officer, Roving Squad - V and the said writ petition was disposed of by order dated 22.12.2014 directing the Commercial Tax Department to remove the second lock put up by the Department and thereafter proceed against the petitioner under the provisions of the TNVAT Act, 2006. In the light of the above facts, the impugned suspension order passed by the second respondent has to be necessarily set aside.

6. Accordingly, this writ petition is allowed and the impugned order dated 30.10.2014 suspending the petitioner's IEC No.0413004155 stands quashed and the respondent is directed to restore the IEC No.0413004155. However, it is open to the respondent to act in accordance with law if any information is received from the Commercial Tax Department and shall proceed further in the matter after issuing notice to the petitioner.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gpa

To

The Asst. Director General of Foreign Trade
O/o.ADGFT
4th Floor, Shastri Bhawan Annexure
Chennai - 600 006

+2cc's to M/s.K.Siva Kumar, Advocate, S.R.No.14303
+1cc to M/s.M.L.Ramesh, Advocate, S.R.No.14405

W.P.No.1572 of 2015
and
M.P.Nos. 1 and 2 of 2015

RSK(CO)
CA(23/03/2015)