IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.18990 of 2015
& M.P.No.1 of 2015

RSM Industries Pvt. Ltd.,
Rep. by its Director,
Shanmugavelu Shobila,
Plot No.3, First Street,
Gandhi Road, Alwarthirunagar,
Chennai-600 087. ... Petitioner

Vs.

Assistant Commissioner (CT),
Saligramam Assessment Circle,
No.21, G.K.Industrial Estate,
Alapakkam-Chennai-600 116. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned order passed by the respondent in TIN/33166289823/2014-15, dated 16.06.2015, quash the same and further direct the respondent to restore the Registration Certificate of the petitioner with retrospective effect.

For petitioner : Mr.N.Murali

For respondent : Mr.A.N.R.Jayaprathap,
Government Advocate

ORDER

The petitioner is a private limited Company incorporated under the provisions of the Companies Act in the year 2015 and is a registered dealer on the file of the respondent, both under the provisions of the TNVAT and Central Sales Tax Act and have been filing monthly Returns under the TNVAT for the relevant assessment years. On having checked the Web-site of the respondent-Department on

16.06.2015, the petitioner-Company noticed that their TIN stood cancelled, which was confirmed on their personal enquiry with the respondent's office, and ultimately, the impugned order, dated 16.06.2015 was passed cancelling the TIN/Registration Certificate of the petitioner-Company. The grievance of the petitioner-Company is that notice had not been served on them before passing the impugned order.

2. Heard both sides and perused the material documents available on record.

3. It is seen that before-ever passing the impugned order, the petitioner was not issued with any notice, nor personal hearing was given. Further, the respondent failed to follow the mandatory provisions of Sections 39(14), 39(15) of the TNVAT Act, read with Rule 19 of the TNVAT Rules. At this juncture, it is to be mentioned that the respondent is not been vested with the suo-motu power of cancellation of Registration Certificate of the petitioner-Company, without even following the mandatory provisions of law, as stated supra. For better appreciation, it is worthwhile to quote the above provisions of law as follows:

"Section 39: Procedure for registration:

(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."

"Rule 19 of the TNVAT Rules: Service of notices, summons or orders:--

(1) The service on a dealer of any notice, summon or order under the Act or these rules may be effected either electronically or manually in any of the following ways, namely:--

(a) by giving or tendering it to such dealer or his manager or agent or the legal practitioner appointed to represent him or to his authorised representative; or

Explanation:--Endorsement by person who delivers the notice, summon or order of having tendered or given will be proof for the purpose of this sub-rule.

(b) if such dealer or his manager or agent or the legal practitioner appointed to represent him, or his authorised representative is not found, by giving or tendering it to any adult member of his family; or

(c) by sending it to the address of the dealer by registered post; or

(d) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence in the presence of two independent witnesses.

(2) Where any Hindu Undivided Family, firm or other association of persons is partitioned, dissolved or discontinued, notice, summon or order issued under the Act or these rules may be served on any member of the Hindu Undivided Family, any person who was a partner (not being a minor) or member of the association, as the case may be, immediately before such partition, dissolution or discontinuance."

4. Hence, in view of the unambiguous mandate of law as extracted above, which the respondent failed to follow before passing the impugned cancellation order of the Registration Certificate of the petitioner-Company, the impugned order is hereby set aside and the matter is remitted back to the respondent for considering the matter afresh and passing appropriate orders, on merits and in accordance with law, as expeditiously as possible. The respondent shall afford due opportunity of hearing to the petitioner-Company before passing the orders afresh as stated above.

5. With the above observations/direction, the Writ Petition is disposed of. No costs. The Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(AD I)

//True Copy//

Sub Assistant Registrar

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Copy to

Assistant Commissioner (CT),
Saligramam Assessment Circle,
No.21, G.K.Industrial Estate,
Alapakkam,
Chennai-600 116.

+1cc to Mr.N.Murali, Advocate, S.R.No.39812
+1cc to the Special Government Pleader(T), S.R.No.40102

W.P.No.18990 of 2015

EV(CO)
CA(20/08/2015)