IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.07.2015

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THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.20355 of 2015
and
M.P.No.1 of 2015

Tvl.Krishna Industries
rep. by its Proprietor Mr.Poonaram,
No.138, Pattaravakkam Railway Station
Road, SIDCO Industrial Estate,
Ambattur, Chennai-98. ...Petitioner

Versus

Assistant Commissioner (CT),
Pattravakkam Assessment Circle,
No.5, 1st Floor, High Court Colony,
Villivakkam, Chennai-49. ...Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the respondent in TIN/33740082183/2014-15 dated 05.06.2015 and Rc.320/2015/A4 dated 09.06.2015, quash the same.

For Petitioner : Mr.S.Raveekumar

For Respondent : Mr.ANR.Jayapratap,
Government Advocate (T)

O R D E R

This Writ Petition has been filed, challenging the proceedings of the respondent in TIN/33740082183/2014-15 dated 05.06.2015 and a consequential order in Rc.320/2015/A4 dated 09.06.2015.

2. The learned Counsel for the petitioner would submit that the petitioner is engaged in Iron and Steel business. The petitioner has effected purchases both locally and from dealers in other States and has also effected local sales and interstate sales. The petitioner has filed returns under both the TNVAT Act, 2006 and the Central Sales Tax Act, 1956 for the Assessment Year 2014-2015. While so, the respondent served a notice dated 27.04.2015 upon the petitioner proposing to reverse the ITC claimed on the premise that the petitioner is a bill trader under Section 19(13) of the TNVAT

Act, 2006. Further, the learned Counsel for the petitioner would submit that it was alleged that the petitioner had failed to produce any proof for the movement of goods for the interstate transactions. Therefore, cancelled the Registration Certificate of the petitioner and initiated action under Section 71. According to the learned Counsel for the petitioner before cancelling the Registration Certificate, no opportunity whatsoever was given to the petitioner as mandated under Section 39(15) of the TNVAT Act, 2006. It was further contended by the learned Counsel for the petitioner that on receipt of the notice dated 27.04.2015 indicating reversion of the ITC and also cancellation of the registration certificate, the petitioner was unable to file a detailed reply since there was an unfortunate bereavement in his family because his wife passed away. In view of the same, he had to take the dead body to his native, namely, Rajasthan for cremation as per his family and religious rites. The learned Counsel would also submit that if there had been another notice issued to the petitioner giving him personal hearing, he would have definitely utilised that opportunity, but he has not received any notice thereafter giving him personal hearing which resulted in passing of the impugned order cancelling his registration certificate by the respondent.

3. Learned Government Advocate taking notice for the respondent would submit that the petitioner has got more efficacious remedy as against the impugned order passed by the respondent before the Joint Commissioner (CT), Chennai South, within 30 days from the date of receipt of the impugned order. Therefore, this Writ Petition is not maintainable before this Court.

4. This Court is unable to accept the said contention of the learned Government Advocate for the respondent for two reasons. Firstly, as rightly pointed out by the learned Counsel for the petitioner, the notice dated 27.04.2015 was issued by the respondent proposing to reverse the ITC claimed by the petitioner on the ground that the petitioner is a bill trader under Section 19(13) of the TNVAT Act, 2006. Secondly, due to the sudden demise of the wife of the petitioner on 23.04.2015, he has failed to produce any proof for the movement of goods for the interstate transactions because he rushed to his native place along with the dead body of his wife for funeral function. I find full merits in this submission, therefore, in my considered view, though the petitioner has not submitted any reply before passing the impugned order, in all fairness, the respondent ought to have adhered with the mandatory provision of Section 39(15) of the TNVAT Act, 2006 which clearly says that a registration certificate shall not be cancelled by the authority without giving an opportunity of being heard to the registered dealer. As this exercise has not been done, which is mandatory in nature, the impugned proceedings is liable to be set aside.

5. Accordingly, the impugned order of the respondent is set aside. The petitioner is given one more opportunity to go before the Assessing Officer, namely, the respondent herein, along with a

detailed reply/objections within a period of one week from the date of receipt of a copy of this Order. On receipt of the reply/objections from the petitioner, the respondent shall issue another notice fixing a date for personal hearing within a period of one week thereafter and to proceed afresh without influenced by the earlier order.

6. With the above observation, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

Assistant Commissioner (CT),
Pattravakkam Assessment Circle, No.5, 1st Floor,
High Court Colony, Villivakkam,
Chennai-49.

1 CC to Mr.S.Raveekumar, Advocate SR.No. 34693

1 CC to the Government Pleader (Taxes), SR.No. 34770

W.P.No.20355 of 2015

VGI (CO)
PSI (23.07.2015)