IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.NO.20794 OF 2015

AND

M.P.NO.1 OF 2015

Tvl.Acson Engineering Pvt Limited
represented by its Managing Director ...Petitioner

Vs.

The Assistant Commissioner [CT]
Nungambakkam Assessment Circle,
Chennai - 600 031. ...Respondent

Prayer:

Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the respondent in Order of Cancellation of Registration in Cancellation ID:729773508 dated 23.03.2015 signed on 17.06.2015 and quash the same as illegal and unconstitutional and direct the respondent to revoke the cancellation of the registration of the petitioner in TIN 33410461780 and pass fresh orders in accordance with law.

For Petitioner : Mr.A.Ravichandran
For Respondent : Mr.Manoharan Sundaram
Additional Government Pleader (T)

ORDER

By consent, the writ petition is taken up for final disposal.

2.This writ petition has been filed by Tvl.Acson Engineering Private Limited represented by its Managing Director challenging the correctness of the impugned order passed by the Assistant Commissioner [CT], Nungambakkam Assessment Circle, Chennai in Cancellation ID:729773508 dated 23.03.2015 signed on 17.06.2015.

3.The cryptic impugned order reads as follows:

> "Tvl. ACSON ENGINEERING PRIVTE LIMITED were granted Registration Number (TIN: 33410461780) under VAT Act 2006 for doing business in 3/30, GULLAM ABBAS ALIKHAN STREET 9, CHENNAI - 600 006.
>
> The VAT Registration with TIN: 33410461780 is hereby ordered to be cancelled with Effect from 23-03-2015 for the reasons that,
>
> 1) The dealer have not filed monthly returns from December 2014.
>
> 2) Cancellation Notice dated 27.02.2015 issued by this office has been returned by Postal authorities for the reason that "No such name in this address"."

4.Attacking the above non-speaking and cryptic order, the learned counsel appearing for the petitioner would submit that when the petitioner is registered under the Tamil Nadu Value Added Tax Act, 2006 with their Principal place of business at 3/30, Ghulam Abbas Alikhan Street, Thousand Lights, Chennai along with Factory operating at No.63/1 to 3, Bangalore High Road, Mambakkam Village, [Opposite St Gobain Glass Ltd], Sriperumbudur, the respondent/ Assistant Commissioner [CT], Nungambakkam Assessment Circle, Chennai issued a notice dated 10.06.2015 indicating that the petitioner had not filed their monthly returns from December, 2014 to March, 2015, however claimed Input Tax Credit on their purchases effected during the relevant period and hence it was proposed to reverse the Input Tax Credit so claimed and also thereupon called for objection within a period of 15 days from the date of receipt of the said notice.

5.The learned counsel appearing for the petitioner would further submit that after receipt of the notice dated 10.06.2015, when the petitioner has got time till 25.06.2015, suddenly, the respondent issued the Order of Cancellation of Registration in Cancellation ID:729773508 dated 23.03.2015 signed on 17.06.2015 for the reasons best known to them. He would further submit that the approach of the respondent is highly inappropriate and also running contrary to the provision of the Act.

6.In similar circumstances, this Court in a decision reported in (2013) 58 VST 58 (Mad.) (M/s.F.K.M.Steels Vs. Assistant Commissioner (CT) has come down heavily against the cancellation of the Registration of the petitioner without giving an opportunity of personal hearing as it is in total violation to clause 15 of Section 39 of the Tamil Nadu Value Added Tax Act, 2006. It is appropriate to extract hereunder the relevant portion of the above said order which reads as follows:

> "5.In view of the averments made on behalf of the petitioners as well as the respondent, and on a perusal of the records available, it is seen that the registrations of the petitioners had been cancelled by the impugned orders of the respondent, without giving an opportunity of personal hearing to the petitioners, as provided under clause 15 of Section 39 of the Tamil Nadu Value Added Tax Act, 2006.
>
> 6.Further, nothing has been shown on behalf of the respondent to substantiate the claim that the respondent has the authority or power to cancel the registration, retrospectively. In such circumstances, the impugned orders of the respondent are set aside. However, it would be open to the respondent to serve notices on the petitioners, at the addresses furnished by the petitioners in the present writ petitions, asking the petitioners to show cause as to why the registrations of the petitioners should not be cancelled. On receipt of such notices, the petitioners shall file its objections, if any, along with the relevant documents. On receipt of such objections, the respondent shall consider the same and pass appropriate orders thereon, on merits and in accordance with law, after giving an opportunity of personal hearing to the petitioners."

7.A reading of the above observation clearly shows that the respondent, in my considered opinion, has hurridly passed the order without following the mandatory conditions mentioned under clause 15 of Section 39 of the Tamil Nadu Value Added Tax Act, 2006 which mandates the Assessing Officer to provide personal hearing before proceeding to cancel the Registration Certificate of the registered dealer.

8.Secondly, when the petitioner received the notice dated 10.06.2015 proposing to reverse the Input Tax Credit calling for objections within a period of 15 days and when the petitioner has got time till 25.06.2015, suddenly, the respondent issued the Order of Cancellation of Registration in Cancellation ID:729773508 dated 23.03.2015 signed on 17.06.2015, which is also contrary to the Act.

9.Thirdly, the Order of Cancellation of Registration in Cancellation ID:729773508 dated 23.03.2015 signed on 17.06.2015 also clearly shows that no pre-cancellation notice was received by the petitioner.

10.Therefore, this Court finding no justification whatsoever from any angle has no hesitation to set aside the impugned order and the same is accordingly set aside.

11.The record shows that the petitioner has already filed the returns. Therefore, the matter is remanded back to the file of the Assessing Officer to properly apply his mind as a Quasi Judicial Officer on the available documents and thereafter to pass a speaking order on merits. It is needless to mention that the petitioner should be given personal hearing.

12.The writ petition is allowed and the impugned order is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

13.Registry is directed to send a copy of the order to The Commissioner of Commercial Tax, Office of the Commissioner of Commercial Tax, Ezhilagam, Chepauk, Chennai, so that he will be able to witness the improper functioning of the Assistant Commissioner (CT) for further course of action if need be.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. The Assistant Commissioner [CT]
   Nungambakkam Assessment Circle,
   Chennai - 600 031.

2. The Commissioner of Commercial Tax
   O/O The Commissioner of Commercial Tax
   Ezhikgam, Chepauk Chennai

+1cc to Special Government Pleader in SR 35290
+1cc to Mr. A.Ravichandran Advocate in SR 35438

W.P.No.20794 of 2015
And
M.P.No.1 of 2015

LRS (CO)
RS 11.08.2015