IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No.28267 of 2015
& M.P.Nos.1 to 3 of 2015

M/s.Anu Impex
Rep by its P.A. Holder Gopal Krishna
Ramachandra Malpani
No.699/700 P.H.Road Kumbat Complex
Shop No.8 Aminjikarai Chennai 29 ... Petitioner

Vs

The Assistant Commissioner (CT)
Purasawalkam Assessment Circle
Dowlath Towers Taylors Road Kilpauk
Chennai 10 ... Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of Certorarified mandamus to call for the records on the file of the respondent in PDL.178/2014-II dated 20.3.2015 (Sl.No.43) and quash the same as illegal contrary to the provisions of the TNVAT Act principles of natural justice and fair play and direct the respondent to restore the petitioners registration in TIN 33911061062 and CST.719130

For petitioner : Mr.T.Pramod Kumar Chopda

For respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader(T)

O R D E R

Heard the learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes), who took notice for the respondent and with their consent, the main writ petition itself is taken up for disposal.

2. This writ petition has been filed challenging the Cancellation made in PDL.178/2014-II dated 20.3.2015 (Sl.No.43). On the ground of bald allegation of alleged stopped business, the Registration Certificate of the petitioner came to be cancelled by the impugned order retrospectively.

3.The learned counsel for the petitioner submits the petitioner's registered place of business was at No.51, Gantz Road, Kannikapuram, Chennai 12 and now shifted to No.699/700, P.H.Road, Shop No.8, Aminjikarai, Chennai 29, with effect from 01.01.2015. He would further submit that in the month of February 2015, the petitioner had business opportunity and effected purchase and sales during the said month and attempted to e.file the return for the month of February 2015, but could not log in the website of the department because of change of category from monthly return to annual return. When the petitioner approached the respondent, he was informed that it will take some time to change the category of annual return to monthly return and till then the petitioner can file monthly return manually along with tax payment. Accordingly, the petitioner filed monthly return for the month of February 2015 manually and paid tax thereon on 20.03.2015. It is the submission of the learned counsel for the petitioner that the petitioner continued to file monthly returns manually and filed return for the month of March, April, May and June 2015. It is his further submission that on 30.04.2015, the petitioner also reminded the respondent by letter to change the category of the petitioner return filing from annual to monthly return. However, in the last week of July 2015, when the petitioner was again trying to log in the website of the department, to their shock, they found the screen shot in the computer "deemed cancellation"of the petitioner's registration certificate. When the petitioner immediately contacted the respondent and enquired about the same, the impugned order was furnished by informing that their registration was cancelled. The respondent seems to have not issued any notice much less notice to the new place of business which was duly intimated on 27.01.2015. According to the learned counsel for the petitioner, while passing the cancellation order, the assessing authority has failed to adhere to the procedure prescribed under Section 39(14) & (15) of TNVAT Act and therefore, sought to quash the said order.

4. The learned Additional Government Pleader, on instructions, fairly submitted that no proper service of notice was effected to the petitioner before cancellation of registration certificate.

5. Without following the provisions of Section 39(14) & (15) of TNVAT Act, the respondent cancelled the registration certificate of the petitioner. Such exercise by the assessing authority for cancellation of the registration certificate is not supported by any legal provision. Hence, the impugned order is liable to be set aside.

6. In the result, the impugned order dated 20.03.2015, passed by the respondent is set aside. Since the impugned order is set aside, the registration certificate of the petitioner is directed to be restored forthwith and the petitioner is permitted to continue to file the returns. However, it is open to the respondent to take further action by following the due process of law. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT)
Purasawalkam Assessment Circle
Dowlath Towers Taylors Road Kilpauk
Chennai 10

+1cc to the Special Government Pleader(Taxes), S.R.No.58369
+1CC TO M/S.T.Pramod Kumar Chopda, Advocate Sr.58182[11/12/2015]

W.P.No.28267 of 2015

SCD(CO)
CA(04/11/2015)