IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2015

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.No.31607 of 2015
MP.No.1 of 2015

M/s.Astra Medical ..Petitioner
rep.by its Authorised Signatory
Nungambakkam,
Chennai - 600 034

Vs.

The Assistant Commissioner (CT)
Valuvarkottam Assessment Circle
Chennai - 600 006 ..Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the Respondent in TIN 33241502247, dated 29.10.2014 and to quash the same and to direct the respondent to restore the sale tax registration under TNVAT and CST Acts and provide an opportunity of personal hearing.

For Petitioner : Mr.C.Baktha Siromoni

For Respondents : Mr.S.Kanmani Annamalai,
Additional Government Pleader

ORDER

The Petitioner has challenged the proceedings of the 2nd respondent dated 29.10.2014, cancelling VAT Registration with TIN 33241502247 of the Petitioner.

2. The Petitioner is a registered dealer under the Tamil Nadu Value Added Tax Act 2006 and the CST Act 1956, holding TIN 33241502247. The Petitioner is dealer in Hearing Aid and its parts, which are exempted commodities under the Tamil Nadu Value Added Tax Act, 2006. The Petitioner filed annual returns for each year till March 2014, showing exemption of the products. The Petitioner did not avail any input tax credit or collected any sales tax during the course of the business. While so, the VAT Registration with TIN 33241502247 of the Petitioner was canceled with retrospective effect from 1.4.2013 by the impugned proceedings dated 29.10.2014. Hence, the Petitioner has filed this Writ Petition, assailing the impugned proceedings, contending that without giving a notice or opportunity of hearing to the Petitioner and without following the procedure for cancellation of registration, VAT Registration with TIN of the Petitioner was canceled.

3. This court heard the learned counsel on either side and considered their submissions and also perused the materials placed on record.

4. According to the Respondent, the TIN of the Petitioner was cancelled on the ground that the Petitioner did not file the returns for the assessment years 2007-2008 to 2013-2014 within the due dates, despite giving the information about the non filing of returns to the Petitioner and in spite of receiving the notice dated 7.6.2014. But, according to the Petitioner, they had filed returns for the said assessment years and got acknowledgments from the Respondent and also filed the copies of the same in the additional typed set of papers and the Petitioner obtained the copy of the impugned proceedings dated 29.10.2014 only on 23.09.2015. However, it is seen from the records that the Petitioner did not file the returns for the said assessment years within the due dates and the Petitioner filed the returns belatedly. When the authority has jurisdiction to ignore such returns filed and proceed against the Petitioner in respect of non-filing of the returns, while taking recourse to the cancellation of registration, the provisions of law require that there must be a proper initiation of proceedings before a cancellation order was passed, by giving a notice to the Petitioner to show cause as to why registration should not be cancelled.

5. At this juncture, it is relevant to extract the provisions of Section 39 (13), 14) and (15) of the Tamil Nadu Value Added Tax Act, 2006, as under:-

> "39. Procedure for registration: -
>
> (13) A registered dealer shall be entitled to have his registration cancelled, if he is able to prove to the satisfaction of the prescribed authority that his turnover in each of the two consecutive years immediately preceding the application was less than the limit specified in section 3.
>
> (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."

6. In the case on hand, it is seen that there was no proper service of notice nor there was any opportunity of hearing given to the Petitioner before cancelling the registration and though it has been stated in the impugned proceedings that the dealer has received notice on 07.06.2014, no proper acknowledgment for service of such notice or any notice is produced, besides there is no justification

nor valid grounds to sustain the impugned proceedings of the Respondent. It is settled law that any order passed, without proper opportunity as per the provisions of the Act, vitiates the entire proceedings. Hence, on this ground, the impugned order is liable to be set aside and accordingly, it is set aside. The respondent is directed to reactivate the registration of the Petitioner. However, in view of the fact that the Petitioner did not file the returns for the assessment years in question within the due dates, the Respondents are at liberty to initiate appropriate proceedings against the Petitioner, as regards the belated returns in a manner known to law.

7. With the above directions, this Writ Petition is disposed of. No costs.
Srcm

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub-Assistant Registrar

To

The Assistant Commissioner (CT)
Valuvarkottam Assessment Circle
Chennai - 600 006

+1 C.C. To MR.C.Baktha Siromoni, Advocate in SR.NO.63763

+1 C.C. To Special Government Pleader (Taxes), in SR.NO.63909

W.P.No.31607 of 2015

VS(CO)
sd : 08/12/2015