IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.34029 of 2015

Parshvi Global Interlinks Pvt. Ltd.,
represented by its Director
Bhabutmal Purohit,
No.24, Moore Street,
Chennai 600 001 ... Petitioner

Vs.

Assistant Commissioner (CT)
Harbour Assessment Circle,
No.116, Angappa Naicken Street,
Chennai 600 001. ... Respondent

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for issuance of writ of Mandamus praying for a direction to the respondent to give effective date of cancellation of registration with effect from 1.10.2015 instead of 8.12.2014 as made by the respondent in the department website.

For Petitioner : Mr. N. Murali
For Respondent : Mr.S. Kanmani Annamalai
Additional Government Pleader (T)

ORDER

The Petitioner has filed this writ petition praying for a direction, directing the respondent to give effect to the date of cancellation of registration with effect from 01.10.2015 instead of 08.12.2014 as made by the respondent in the department website.

2.The case of the petitioner is that the petitioner who is a private limited company incorporated under the companies act is a registered dealer on the files of the respondent under Tamil Nadu Value Added Tax Act 2006 and Central Sales Tax Act 1956 with effect from 08.12.2014. The petitioner filed monthly returns under TNVAT 2006 before the respondent for the assessment years 2014-2015 and 2015-2016 (up to August 2015) . According to the petitioner, the taxable turnover reported for the assessment year 2014-2015 is Nil and for 2015-2016 up to

August 2015 is Rs.1,37,02,33,992/- and ITC claimed on the basis of the tax paid is Rs.6,92,46,651/-.

3. Whileso, the petitioner received a notice dated 23.09.2015 from the respondent, who disallowed the entire transaction and further proposed to assess tax at 5% and the petitioner was also informed to appear in person to the respondent's office, failing which, the registration certificate will be cancelled with retrospective effect from 08.12.2014. It is further stated in the notice that it is also proposed to levy penalty under Section 27(3)(c) of VAT Act, 2006 as there is a mismatch of transaction between buyers Annexure I and Sellers Annexure II as tabulated therein. For that, the petitioner sent a reply through his letter dated 30.09.2015.

4. It is the further case that since there was a difference of opinion among the directors of the petitioner company, they have decided to close down their business, in consequence of which, the petitioner company sent a business closure letter dated 30.09.2015 to the respondent on 01.10.2015 stating that they have closed the business with effect from 30.09.2015. Further, according to the petitioner, on account of the above dispute among the directors of the petitioner company, the petitioner is yet to file monthly returns for the month of September 2015. But Subsequently the petitioner came to know that the petitioner's Registration Certificate was cancelled with effect from 08.12.2014 without any notice.

5. Learned counsel for petitioner submitted that the respondent cannot fix the date of cancellation of registration with retrospective effect from 08.12.2014, since as per section 39(10) of the TNVAT Act, 2006, the respondent can cancel the registration certificate only after recording reasons or it can be voluntary closure of business by the dealer. He further submitted that as it is a voluntary closure of business on the part of the petitioner, the cancellation can only be effected from the date of submitting the application for cancellation and not from the date of granting certificate of registration. It is his further submission that the respondent neither issued any notice, nor provided any opportunity of personal hearing before effecting the retrospective date of cancellation of registration from 08.12.2014.

6. It is apparent that the petitioner surrendered his registration certificate since the business operations came to be closed. Accordingly with effect from 1.10.2015, the petitioner sought for cancellation of its registration certificate. While giving effect to the surrender, the respondent instead of treating it on and from 1.10.2015, gave an effect from 8.12.204 which is sought to be rectified by the petitioner. Further, the petitioner sent a letter on

30.9.2015, informing the respondent that the petitioner company has closed its business with effect from 30.9.2015 and for which, the petitioner has also obtained an acknowledgment from the respondent.

7. On notice, the learned Additional Government Pleader (T) submitted that inadvertently the effect for cancellation of registration certificate of petitioner was given on and from 8.12.2014 and in this connection, he would submit that the authority would rectify the same.

8. The said submission of the learned Additional Government Pleader is recorded. In view of the above, the respondent is directed to give effect to the cancellation of registration certificate of the petitioner as requested by the petitioner on and from 1.10.2015 and pass appropriate orders within a period of two weeks from the date of receipt of a copy of this order.

9. With the above direction, this Writ Petition is disposed of. No costs. Consequently, M.P.No.1 of 2015 is closed.

msr

Sd/-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner (CT)
Harbour Assessment Circle,
No.116, Angappa Naicken Street,
Chennai 600 001

\+ 1 cc to M/s.N.Murali, Advocate SR 64421

\+ 1 cc to Spl.Govt.Pleader (Taxes) SR 64774

vd(co)
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