In the High Court of Judicature at Madras

Dated : 03.6.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.18663 of 2016 and WMP.No.16329 of 2016

M/s.Jaya Granits, rep.by
its Partner ...Petitioner

Vs

The Assistant Commissioner (CT),
Hosur (North). ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent in Roc.No.428/2016/A2 dated 5.5.2016, quash the same and direct the respondent to issue registration to the petitioner as a dealer under the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner : Mr.Adithya Reddy
For Respondent : Mr.S.Kanmani Annamalai, AGP

ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader takes notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner, claiming to be a retailer in granite, applied for registration under the provisions of the Tamil Nadu Value Added Tax Act, 2006 by application dated 28.3.2016. The said application has been rejected by the respondent stating that the proposed place of business is a residential area and that the petitioner having applied for registration as a dealer of granite commodity, such business cannot be carried on in a residential premises. This order is questioned in this writ petition.

3. The learned counsel for the petitioner has drawn the attention of this Court to the decision in the case of Sri Sundha Metals Vs. Commissioner of Commercial Taxes, Chennai [(2013) 57 VST 73 (Mad.)] for the proposition that the extent of the premises or the place where the business premises is to be situated, is of no consequence while considering the issuance of registration certificate under the provisions of the said Act.

The learned counsel also referred to Section 39(1) and (2) of the said Act and submitted that if the Authority granting certificate of registration is satisfied that the application is in order, he shall register the application and grant a certificate. It is further submitted that in terms of Sub-Section (14) of Section 39, the Authority is permitted to cancel, modify or amend the certificate of registration in the event of any violation.

4. The learned Additional Government Pleader appearing for the respondents submitted that the petitioner seeks to carry on business in granite and obviously granite business cannot be carried on in a residential area and that it requires a stockyard.

5. However, it has to be pointed out that the petitioner has applied for licence stating the nature of business as a retailer and that they do not propose to stock granite in the place of business mentioned in the application.

6. In the decision reported in (2013) 57 VST 73 (Mad.) (cited supra), the application for registration was rejected on the ground that the place of business was only 80 sq.ft and it was not possible to do business. While considering the correctness of the said order, this Court took into consideration Section 39 of the Act and a circular issued by the Commissioner of Commercial Taxes in Circular No.11/2011 dated 25.3.2011 and held that when there is no dispute with regard to the genuineness of the business that is going to be carried on at the place of business, it is not for the Revenue to suggest the extent of the land that is necessary to carry on the business and it is for the businessman to decide the same. In the light of the said decision, the stand taken in the impugned order cannot be countenanced. However, the Authority is entitled to verify as to whether the application submitted by the petitioner is otherwise in order and examine the same in terms of Section 39 of the said Act.

7. In view of the above, the writ petition is allowed, the impugned order is set aside and the respondent is directed to re-consider the application for registration, after taking into consideration the law laid down by this Court in the decision reported in (2013) 57 VST 73 (Mad.), call for appropriate documents to establish that the petitioner proposes to be only a retailer and upon satisfaction, the respondent shall grant a registration certificate to the petitioner subject to the condition that the petitioner complies with other formalities.

The above exercise shall be carried out within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the above MP is closed.

-s/d-
Assistant Registrar(II)

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner (CT), Hosur (North).

+ 1 cc to Spl. Govt. Pleader (T) SR 29952

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