IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2016

CORAM:

THE HON 'BLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.33942 of 2016 and WMP.Nos.29295 & 29296 of 2016

M/s Sri Karpagam Constructions,
Rep.by its Partner,
No.5, Chinnaya Garden, 1st Street,
Saidapet, Chennai 600 015. ..Petitioner

vs

Assistant Commissioner (CT),
Saidapet Assessment Circle,
Chennai 600 015. ..Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, seeking for Writ of Certiorarified Mandamus, calling for the proceedings of the cancellation of registration orders published in the departmental intra-net by the respondent during the period 01.06.2016 to 30.06.2016 based on the computer generated notice issued by the respondent in computerised No.10101023849598 and TIN No.33396224173 dated 16.06.2016 and quash the same and direct the respondent to restore the sales tax registration under TNVAT and CST Act.

For Petitioner :Mr.C.Bakthasiromoni
For Respondent :Mr.K.Venkatesh,GA(T)

O R D E R

Heard Mr.C.Bakthasiromoni, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate (Tax) appearing for the respondent. By consent, the writ petition is taken-up for final disposal.

2. In this writ petition, the petitioner, which is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax, 2006 and the Central Sales Tax Act, 1956, has challenged an order passed by the respondent dated 16.06.2016, canceling the petitioner's registration certificate.

3. The order states that under the power vested under Section 39(14) of the State Act as well as under the Central

Act, the registration is canceled with effect from 01.07.2016 for the reasons set out in the order. In the column reasons, all that has been stated is “canceled”. Therefore, the mere use of the expression “cancelled” can hardly be a reason for cancellation. The respondent, while effecting cancellation, should pass a speaking order, especially when the petitioner submitted a reply to the show cause notice on 27.06.2016 stating that they are contractors for Chennai Corporation doing various road contract works and because of non- furnishing of Tax Deducted at Source (TDS) Certificate upto the date, they were filing NIL returns and filed Tax Deducted at Source (TDS) Certificate in the office of the respondent for Rs.5,96,27,092/- and Rs.6,61,34,548/- and therefore, the requested the respondent to re-consider the proposal and allow the petitioner to continue the business.

4. However, without considering the said reply and without affording an opportunity of the personal hearing, the impugned order has been passed and that too, without assigning any reasons. In terms of Section 39(15) of the State Act, before effecting such cancellation, an opportunity of personal hearing is mandatory and this legal position has been stated in several decisions and one such decision is Indo Germa Products Limited v. Assistant Commissioner (CT), Thiruvottiyur Assessment Circle, Chennai [(2011) 45 VST 236 (Mad.)], wherein it was held that cancellation of registration certificate, without affording an opportunity of personal hearing, is unsustainable, though a show cause notice was issued. Thus, for all the above reasons, the impugned order dated 16.06.2016 is held to be unsustainable.

5. Accordingly, this writ petition is allowed and the impugned order is set aside. The petitioner's registration certificate is directed to be restored and after restoration, the petitioner shall be directed to appear in person before the respondent and produce Tax Deducted at Source (TDS) Certificate and other records to justify NIL returns filed by him. It is, thereafter, open to the respondent to consider all the documents to be submitted by the petitioner, verify the facts and pass a speaking order, on merits and in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

Assistant Commissioner (CT),
Saidapet Assessment Circle,
Chennai 600 015.

+1 CC M/s. C. Bakthasiromoni, Advocate Sr.No.55205
+1 CC Special Government Pleader, Sr.No.55074

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CTK (CO)
MD : 03/10/2016