IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.36999 of 2016

Tvl.Thirbovan Enterprises Pvt. Ltd.
rep. by its Director Mukesh Sharma .. Petitioner

-Vs-

The Assistant Commissioner (CT)(FAC)
Ranipet SIPCOT Assessment Circle
Ranipet (SIPCOT). .. Respondent

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records, on the files of the respondent in Na.Ka.A2/1271/2013 dated 20.06.2016, and quash the same as being without jurisdiction and authority of law and contrary to the principle laid down by this Court in the Judgment reported in (2013) 60 VST 530 (Mad) (Sukhi Iron & Steel Company V. Assistant Commissioner (CT), Thiruvanmiyur Assessment Circle, Chennai).

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.R.Senniappan, learned Counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate, who has accepted notice on behalf of the respondent. With the consent of the learned counsel appearing on either side, the Writ Petition itself is taken up for disposal.

2.The petitioner has filed this Writ Petition challenging the order dated 20.06.2016, cancelling their Registration Certificate granted under the provisions of the Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act], with retrospective effect from 09.02.2013.

3.The petitioner's contention is that the impugned order is contrary to the several decisions of this Court and in particular the decision in the cae of *Sukhi Iron & Steel Company V. Assistant Commissioner (CT), Thiruvanmiyur Assessment Circle, Chennai [(2013) 60 VST 530 (Mad)*].

4.The learned counsel for the petitioner submitted that the petitioner has been periodically filing the returns and sending the same by Registered Post, as the web-site has been blocked and therefore the respondent could not have cancelled the petitioner's registration cetificate on the ground that the proper returns have not been filed.

5.The Assistant Commissioner (CT), who is present in Court, produced copies of the communications received by him from the Joint Commissioner (CT), Enforcement Wing, Vellore Division, dated 06.06.2016, accompanied by the statement recorded by the Enforcement Wing Officials and by placing reliance on the same, it is submitted that the petitioner is not carrying on business in the said premises and he is a bogus dealer. In this regard, reliance has been placed on the statement recorded from Thiru A.K.Subramani, who is the owner of the premises, where the petitioner was carrying on business.

6.It is submitted that the owner of the premises has given a statement that about two years back, the petitioner has vacated the premises and no business is being carried on, however, those facts do not find place in the impugned proceedings, but the only reason for cancellation of the registration with retrospective effect was on the ground that the petitioner has not filed proper returns.

7.The respondent while admitting that they have received certain returns through Registered Post, would submit that the petitioner is not carrying on any business, the returns could not be accepted as the petitioner is a bogus dealer.

8.In any event, the impugned order has been passed without notice to the petitioner, the proper procedure to be adopted by the respondent would be to issue a show cause notice to the petitioner, disclosing the reasons as to why the respondent proposes to cancel the registration and after affording an opportunity to the petitioner to submit objections, the respondent should pass a speaking order.

9.In the light of the above, the Writ Petition is allowed, the impugned order is set aside and the respondent is directed to issue a show cause notice to the petitioner, within a period of one week from the date of receipt of a copy of this order, giving fifteen days time to the petitoiner to submit their objections, after which, the respondent shall consider the same and pass a speaking order on merits and in accordance with law, within a period of fifteen days therefrom. Considering the peculiar facts and circumstances of the case, though the impugned order has been set aside, this Court directs that until the above procedure is complied with, the Registration Certificate of the petitioner shall not be restored and abide by the orders to be passed by the respondent. No costs.

24.10.2016

RPA

To

The Assistant Commissioner (CT)(FAC)
Ranipet SIPCOT Assessment Circle
Ranipet (SIPCOT).

T.S.SIVAGNANAM, J.
RPA

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