IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2016

CORAM:

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

Writ Petition No.40968 of 2016
&
WMP.Nos.34937 to 34939 of 2016

M/s.Bhawar Sales Corporation,
rep.by its Partner Sanjay Kumar ... Petitioner

Vs

The Assistant Commissioner (CT),
Amaindakarai Assessment Circle,
Kilpauk, Chennai-10. ... Respondent

PETITION under Article 226 of The Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent in her proceedings in Cancellation ID.10101108455862 dated 20.10.2016, quash the same as illegal and direct the respondent to activate TIN No.33951502778 of the petitioner.

For Petitioner : Mr.S.Ramanathan

For Respondent : Mr.K.Venkatesh,
Government Advocate

ORDER

Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner is aggrieved by the cancellation of the registration certificate granted in their favour under the provisions of the Tamil Nadu Value Added Tax Act, 2006.

3. The petitioner received a show cause notice dated 20.10.2016 calling upon them to explain as to why the registration should not be cancelled for non filing of the

returns for three consecutive months namely for July, August and September 2016. Even prior to the said notice, on 18.10.2016, the respondent proposed to make a best judgment assessment issued for those three months by adding 10% to the turnover of June 2016.

4. The petitioner, on receipt of the notice proposing cancellation of the registration, sent a reply on 21.10.2016, which has been received by the office of the respondent. However, by proceedings dated 20.10.2016, i.e. the same date, on which, the show cause notice was issued, the petitioner's registration has been cancelled.

5. It is seen from the impugned order of cancellation that though it is dated 20.10.2016, the concerned Officer affixed the digital signature on 15.11.2016. In the objections dated 21.10.2016 to the show cause notice dated 20.10.2016, the petitioner clearly pointed out the reasons for the belated filing of returns and one of the reasons being that they are unable to access the website and upload the details.

6. Immediately thereafter, the petitioner filed returns for all the three months and paid taxes, which have been accepted by the respondent. After complying with the same, the petitioner gave a representation dated 15.11.2016 stating that when they wanted to file their monthly returns for the month of October 2016 on 12.11.2016, they were unable to access the website, which showed that the petitioner's registration has been cancelled. The petitioner was shocked to know about the same, as their objections dated 21.10.2016 have not been considered.

7. Thus, it is seen that the impugned order of cancellation has been passed in violation of the principles of natural justice without taking into consideration the objections dated 21.10.2016 to the show cause notice dated 20.10.2016. Further in the show cause notice, the petitioner was granted 15 days' time to give their objections and the objections given by the petitioner are well within the 15 days' time. Therefore, it is not known as to how the respondent could have passed a cancellation order on the very same day - the date on which the show case notice was issued i.e 20.10.2016. Further, there is no plausible explanation as to why the official has signed the order only on 15.11.2016. In any event, the reason for cancellation of the petitioner's registration is for non filing of the returns for the months of July, August and September 2016 and this defect does not exist any longer, since the petitioner filed the returns and paid taxes and the copies in proof of the same have been filed in the typed set of papers. For all the above reasons, the impugned order is held to be illegal.

8. Accordingly, the writ petition is allowed, the impugned order is set aside and the respondent is directed to restore the registration of the petitioner so as to enable the petitioner to file the monthly returns for the month of October 2016. No costs. Consequently, the above WMPs are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT),
Amaindakarai Assessment Circle,
Kilpauk, Chennai-10.

+1cc to Mr.S.Ramanathan, Advocate, S.R.No.67618
+1cc to the Special Government Pleader(T), S.R.No.67913

W.P.No.40968 of 2016
&
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SAI(CO)
CA(23/11/2016)