In the High Court of Judicature at Madras

Dated : 28.11.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.41583 of 2016 & WMP.Nos.35591 to 35593 of 2016

M/s.Visku Enterprises, rep.
by Proprietrix Rekha Modi ...Petitioner

Vs

The Assistant Commissioner (CT),
Kothawalchavadi Assessment Circle,
Chennai-1. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the impugned registration cancellation order dated 16.8.2016 in Cancellation ID 1010104142951l, quash the same as passed without granting reasonable opportunity to the petitioner as contemplated under the provisions of the TNVAT Act including a personal hearing and further direct the respondent to restore the TIN and CST No.33200182196 of the petitioner and pass orders in accordance with law.

For Petitioner : Mr.P.Rajkumar
For Respondent : Mr.K.Venkatesh, GA

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, which is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956, is aggrieved by the order passed by the respondent dated 16.8.2016.

3. The reason assigned by the respondent in the impugned notice is that the petitioner has not filed their monthly returns from April 2016 till the date of cancellation.

4. The learned counsel for the petitioner has drawn the attention of this Court to the e-returns filed by the petitioner

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from April 2015 to May 2016. He would further state that after May 2016, the petitioner was unable to upload the returns in the portal, as a new portal was introduced by the State Government. It is further stated that the petitioner was advised to approach the Computer Cell of the Commercial Taxes Department, Greams Road and that the petitioner's accountant approached the officials there and apprised them of the difficulties faced by the petitioner in signing and uploading the monthly returns. In the meantime, the petitioner was informed of the cancellation of the registration.

5. The cancellation is bad in law for more than one reason. Firstly, the impugned order cancels the registration with retrospective effect. Secondly, the petitioner was not given any notice before such cancellation. Thirdly, the reason assigned in the impugned order appears to be factually incorrect, since copies of the e-returns filed on 15.4.2015 upto May 2016 have been produced before this Court. Fourthly, before cancellation of the registration, Section 39(15) of the said Act mandates an opportunity of personal hearing. Therefore, the impugned assessment order is held to be illegal.

6. Accordingly, the writ petition is allowed, the impugned order is set aside and the petitioner's registration is directed to be restored forthwith. Thereafter, if the respondent is of the opinion that the petitioner made certain contraventions, which may result in cancellation of the registration certificate, it is open to the respondent to issue a show cause notice, hear the petitioner in person and proceed further in accordance with law. No costs. Consequently, the above WMPs are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT), Kothawalchavadi Assessment Circle,
Chennai-1.

+1cc to the Special Government Pleader sr.69604
+1cc to Mr.P.Rajkumar, Advocate Sr.69330

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srg 30/11/2016

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