BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2016

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.(MD) No.22175 of 2016 and
W.M.P.(MD) Nos.15884 & 15885 of 2016

Maheen Small Scale Industries
Represented by its Proprietor,
M.Mohamed Noohu,
130.E.Thiruvanathapuram Road,
Vadasery, Nagercoil - 629 001.
Kanyakumari District ..Petitioner

-vs-

The Commercial Tax Officer,
Nagercoil (Rural),
Mead Street, Nagercoil-629 001.
Kanyakumari District. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records on the file of the respondent in Pdl.178/2013 (Dec.2013) dated 05.12.2013 in cancelling registration certificate of the petitioner in TIN No.33426122064 in Sl.No.112 of the said proceedings under the Tamil Nadu Value Added Tax Act and quash the same as illegal, arbitrary and in violation of the principles of natural justice.

For Petitioner : Mr.N.Sudalai Muthu for M/s M.AZEEM
For Respondent : Mr.R.Karthikeyan
Addl. Govt. Pleader

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O R D E R

This petition has been filed, seeking to quash the impugned order of the respondent dated 05.12.2013 passed in Pdl.178/2013 (Dec.2013), vide which, registration certificates of 201 dealers, including the petitioner, were cancelled on the ground of non filing of either Form-I return or Form I-1 returns for the assessment years from 2006-2007 to 2012-2013 as per Section 21A r/w Rule 7(1) and 7 (7) and Section 39 of the TNVAT Rules. The said impugned proceeding is under challenge in this writ petition.

2. The case of the petitioner is that they are the registered dealer on the file of the respondent with effect from 01.01.2007 in agricultural implements, which have been exempted from the levy of tax; that the petitioner is not liable to pay tax under Section 3(1) (b) of the Act and the sales turnover of the petitioner in Tamil Nadu is less than Rs.10 lakhs per year. It is submitted that while

so, the respondent has cancelled the registration certificate of the petitioner, which has resulted in much hardship and legal problems not only for the petitioner, but also to those persons, who have genuinely purchased the materials from the petitioner and hence, the petitioner has approached this Court by filing the present writ petition.

3. Learned counsel for the petitioner has relied upon the following two judgments of this Court in support of his submission that in the absence of procedures being followed by the authority before cancellation of registration certificates, the impugned order is liable to be set aside *in limine*:

i) **Calpana Service Station vs. Deputy Commercial Tax Officer, (Registration Cell), Commercial Taxes, Puducherry**, reported in **(2012) 52 VST 388 (Mad)**.

ii) **Sukhi Iron & Steel Company vs. Assistant Commissioner (CT), Thiruvanmiyur Assessment Circle, Chennai**, reported in **(2013) 60 VST 530 (Mad)**;

4. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondent.

5. The main plea taken by the petitioner in this case is that no opportunity of hearing has been given to the petitioner before cancelling the certificate, which is in violation of principles of natural justice and it infringes the fundamental rights of the petitioner to carry on its trade, occupation or business.

6. I find much force in the contention raised by the petitioner, because, when the provision of Section 39 of the Tamil Nadu Value Added Tax Act contemplates, providing of an opportunity of personal hearing to the dealer before taking a decision to cancel, modify or amend the certificate of registration, it is a duty cast upon the respondent to adhere to such provision scrupulously. For the sake of ready reference, Section 39 of the said Act is extracted hereunder:

> "39. Procedure for registration - (1) to (13) .....
>
> (14) The authority granting the certificate of registration may, by order, for good and sufficient reasons to cancel, modify or amend any certificate or registration granted by it.
>
> (15) No application for registration or for a copy or duplicate of the certificate under this section shall be refused and no order under sub-section (14) shall be made, unless the dealer concerned has been given an opportunity of being heard."

7.When such being the case, the impugned order, being one passed without following the principles of natural justice, is unsustainable and it is apparent on the face of record that the authority concerned has not taken into account the mandatory provisions of the Act before cancellation of the petitioner's registration certificate. Therefore, the impugned order has no legs to stand and the same has to be interfered with by this Court.

8.Accordingly, in view of what is stated hereinabove, this Writ Petition is allowed and the impugned order is set aside. The matter is remanded back to the respondent with liberty to pass appropriate orders after affording an opportunity of hearing to the petitioner in the light of the judgments referred to supra and by strictly adhering to the mandatory requirements as contemplated under the Act within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (WRITS)

/True Copy/

Sub Assistant Registrar

To:

The Commercial Tax Officer,
Nagercoil (Rural),
Mead Street, Nagercoil-629 001.
Kanyakumari District.

+1cc to Mr. M.AZEEM, Advocate, Sr.No: 81485
+1cc to M/S Special Government Pleader, Sr No.81603

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