IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2017

Date of Reserving the Order	***Date of Pronouncing the Order***
08.09.2017	**06.10.2017**

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.11233 of 2017 &
W.M.P.Nos.12168 & 12169 of 2017

N.V.Kamalesh Kumar
son of Venkatesulu
No.8/18, Veerappanstreet,
Sowcarpet, Chennai - 79 ... Petitioner

Vs.

1.The Additional Commissioner (RP)
Commercial Taxes
Office of the Commissioner
Commercial Taxes,
Chepauk, Chennai -5.

2.M/s.B.S.Silver Emporium
Rep., by Mr.Nirmal Kumar Bohra
No.8/18, Veerappanstreet,
Sowcarpet, Chennai – 79. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the file of the first respondent in proceedings J1/RP/50/2015, dated 18.12.2015, and quash the same as illegal, incompetent and without jurisdiction.

For Petitioner : Ms.R.Poornima

For Respondent : Mr.K.Venkatesh G.A., for R1

Mr.A.Thiyagarajan Sr., Counsel for
Mr.S.Ramesh Kumar for R2

ORDER

Heard Ms.R.Poornima, learned counsel for the petitioner and Mr.A.Thiyagarajan learned Senior Counsel for Mr.S.Ramesh Kumar, learned counsel for the second respondent and Mr.K.Venkatesh, learned Government Advocate appearing for the first respondent.

2. The petitioner has filed this Writ Petition challenging the order passed by the first respondent, dated 18.12.2015. The said order was passed on a revision petition filed by the second respondent challenging the order passed by the Joint Commissioner (CT), Chennai North Division in R.P.No.69 of 2015, dated 19.11.2015. By the said order, the Joint Commissioner had dismissed the revision petition filed by the second respondent thereby confirming the order dated 01.06.2015, passed by the Assistant Commissioner (CT), Peddunaickenpet Assessment Circle, who had cancelled the

registration granted to the second respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, (TNVAT Act), and the Central Sales Tax Act, 1956 (CST Act). The Joint Commissioner hold that the second respondent Mr.Nirmal Kumar Bohra, has obtained registration showing himself as proprietor of M/s.B.S.Silver Emporium by submitting manipulated documents to the office of the Assistant Commissioner, Peddunaickenpet Assessment Circle.

3. The second respondent filed a Writ Petition challenging the said order, dated 01.06.2015 in W.P.No.16508 of 2015. The case of the second respondent was that he is carrying on business in a property belonging to a mutt which was rented out to Writ Petitioner herein. The wife of the second respondent is stated to have entered into a lease agreement with the Writ Petitioner after paying a specified sum of money towards the cost of construction and after construction was completed, the superstructure was leased out to the second respondent. It is the further case of the second respondent that the Writ Petitioner was insisting that he should be made a working partner and to be paid 2% of the profit to him, which is stated to have been refused. While so, a notice was issued by the Assistant Commissioner (CT), dated 20.01.2014, stating that he has

received information that the lease deed given by the second respondent at the time of obtaining registration under the TNVAT Act/CST Act is a forged document. On the other, the second respondent alleged that the Writ Petitioner played fraud by signing the lease deed differently with a criminal intention to extract money from him and he had given a detailed explanation on 25.02.2015 to the Assistant Commissioner (CT). The Writ Petitioner, who was impleaded as the second respondent in W.P.No.16508 of 2015, had a different story to plead stating that he is the lessee of the land and he has been paying the land rent and had put up a superstructure and on 20.04.2012, the Writ Petitioner entered into a lease agreement with the wife of the second respondent herein and subsequently, a partnership deed, dated 07.01.2013, was entered into between the Writ Petitioner and the spouse of the second respondent. That the second respondent has manipulated and created a document by forging the Writ Petitioner's signature and obtained the registration certificate under the TNVAT Act by concealing partnership deed and the registration of the firm. After securing information through the State Information Commissioner, the Assistant Commissioner (CT), issued notice to the petitioner and after conducting a detailed enquiry, has passed the order dated 01.06.2015, cancelling the registration.

The Court, after considering the submissions made on either side, dismissed the Writ Petition filed by the second respondent herein, however granted liberty to file revision before the concerned revisional authority within a time frame. In terms of the liberty granted, the second respondent preferred a revision before the Joint Commissioner (CT), Chennai North in R.P.No.69 of 2015. The said revision petition was dismissed by order dated 19.11.2015. Against the said order, the second respondent preferred second revision petition before the Additional Commissioner, first respondent herein in R.P:J1/RP/50/2015. This Revision Petition has been allowed by the impugned order with a direction to the Assistant Commissioner (CT) Peddunaickenpet Assessment Circle to restore and activate the registration certificate under the TNVAT Act and CST Act in favour of the second respondent herein with retrospective effect from the date of cancellation. It was observed that both parties can approach the Civil Court to establish their rights to ownership and possession over the superstructure of the business premises.

4. The first and foremost ground on which, the impugned order has been challenged is that it has been passed by the first

respondent without affording an opportunity to the Writ Petitioner. It is submitted that when the Writ Petitioner had filed a Caveat Application, the first respondent ought to have given an opportunity to the petitioner. The first respondent failed to see that the petitioner herein is a proper and necessary party and notices/summons ought to have been served on the petitioner. The first respondent had received the revision petition on 23.11.2015, and within 26 days, has passed final orders.

5. The first respondent has not filed a counter affidavit disputing or denying the allegations made by the petitioner. The second respondent has filed a counter affidavit for which a rejoinder affidavit has been filed by the petitioner.

6. I do not propose to go into the factual controversies raised by both parties, since the Court will test the correctness of the impugned order only on the ground as to whether the petitioner had been afforded an opportunity.

7. On a reading of the impugned order, it is seen that the petitioner has not been afforded an opportunity to putforth their

contentions. Infact, copy of the impugned order has not been communicated to the petitioner and he has obtained the same under the Right to Information Act. The first respondent has set aside the order passed by the Joint Commissioner (CT), Chennai North Division, dated 19.11.2015. This order was passed in a revision petition filed by the second respondent herein in R.P.No.69 of 2015, challenging the order passed by the Assistant Commissioner (CT), Peddunaickenpet Assessment Circle, cancelling the second respondent's registration under the TNVAT Act and CST Act.

8. The cancellation of the registration by the Assistant Commissioner was at the instance of the petitioner herein. When the Joint Commissioner heard R.P.No.69 of 2015, she had issued notice to the petitioner herein, heard the second respondent and the petitioner herein and by a detailed and speaking order, dismissed the Revision Petition. Copy of the order, dated 19.11.2015, in R.P.No.69 of 2015, has been communicated to the petitioner. Challenging the said order dated 19.11.2015, further revision was filed by the second respondent before the first respondent. Thus, the elementary principle that should have been followed by the first respondent is to issue notice to the second respondent,(the revision petitioner) as well

as the petitioner herein, who is a proper and necessary party to the proceedings. This is so because, the allegation is that the second respondent forged the signature of the petitioner and with the manipulated documents secured registration under the TNVAT Act & CST Act. Thus, failure to issue notice to the petitioner is fatal to the proceedings. When the records are clear that there is no notice to the petitioner, then the natural consequence that has to follow is to set aside the impugned order and this Court has no hesitation in doing so.

9. Mr.A.Thiyagarajan learned Senior Counsel submitted that after the order dated 18.12.2015, the registration certificate has been restored in favour of the second respondent and he is carrying on business and if this Court set aside the impugned order, the Assistant Commissioner (CT), Peddunaickenpet, Assessment Circle will immediately cancel the second respondent's registration and he would be unable to carry on business. Therefore, it is submitted that in the event, the matter is to be remanded to the first respondent for fresh consideration, then the registration certificate issued to the second respondent should not be cancelled in the interregnum.

10. One of the grounds canvassed by Ms.R.Poornima, is by

demonstrating the haste shown in disposing of the revision petition. The revision petition was filed by the second respondent before the first respondent, on 23.11.2015. The hearing of the revision took place on 14.12.2015, which appears to be a first hearing date and within four days, the impugned order has been passed i.e., on 18.12.2015. This Court can take judicial notice of the fact that the revision petitions are pending before the first revisional authority and the second revisional authority for several years and this Court has issued directions to the revisional authorities to dispose of the revision petitions within a time frame. It is not known as to why, the first respondent has acted in such a hasty manner, that too, without issuing notice to the petitioner herein. The Revision Petition appears to have been given an "out of turn" hearing.

11. For all the above reasons, the Writ Petition is allowed and the impugned order is quashed. The matter is remanded back to the first respondent to be heard and decided afresh. The first respondent shall issue notice to the petitioner as well as the second respondent. Along with the notice to the petitioner, the first respondent shall enclose the copy of the grounds of revision as well as any affidavit and annexures filed by the second respondent in

R.P:J1/RP/50/2015. On receipt of the grounds of revision with annexures, the petitioner is directed to file his counter statement within 15 days from the date of receipt of the grounds of revision with annexures. On receipt of the counter statement, the first respondent shall fix a date for personal hearing, afford an opportunity to both parties to be represented by their respective counsels and after hearing the parties in full, pass fresh orders on merits and in accordance with law. The first respondent should note that his decision should in no manner be influenced by his earlier order, dated 18.12.2015, which has been quashed by this Court. No costs. Consequently, connected Miscellaneous Petitions are closed.

06.10.2017

Index:Yes/No
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To

1.The Joint Commissioner (Commercial Taxes)
Chennai (East) Division,
No.1, Greams Road, Chennai – 600 006.

2.The Commercial Tax Officer,
Air, Cargo, Vehicle Check Point,
Chennai (2) International Air Old,
Airport Buildings, Meenambakkam,
Chennai – 600 027.

T.S.SIVAGNANAM, J.

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Pre-Delivery Order in
W.P.No.11233 of 2017 &
W.M.P.Nos.12168 & 12169 of 2017

06.10.2017