IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2017

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THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

WP.No.21156 of 2017
&
W.M.P.Nos.22030 and 22031 of 2017

M/s.Bombay E-Store India Private Limited,
Rep. by its Director Mrs. Kalpana Murji Patel
No.9, Hazari Street, Woods Road,
Chennai 600 002 ...Petitioner

Vs.

1.The Assistant Commissioner (CT),
Anna Salai Assessment Circle,
PAPJM Annex 4th Floor,
Greams Road, Chennai 600 006.

2.The Deputy Commercial Tax Officer,
Anna Salai Assessment Circle,
PAPJM Annex 4th Floor,
Greams Road, Chennai 600 006.

3.The Joint Commissioner (CT)
Chennai (Central) Division,
PAPJM Annex 4th Floor,
Greams Road, Chennai 600 006.

...Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus to call for records of the first respondent in cancellation ID.10101207893895 dated 13.04.2017 and the consequential order of the second respondent in RP.No.19/2017 dated 11.07.2017, quash the same and to direct the respondents to restore the registration certificate of the petitioner in TIN.33240600923 and CST.Number.31599.

For Petitioner :: Mr.V.Sundareswaran

For Respondents:: Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.V.Sundareswaran,learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondents.

2. With the consent of the learned counsel on either side, the writ petition itself is taken up for disposal.

3. The petitioner was a registered dealer on the file of the first respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act in short). In this writ petition, the petitioner has challenged the cancellation of their registration by order dated 06.02.2017 passed by the first respondent and the order passed by the second respondent rejecting the revision petition filed by the petitioner against the cancellation of registration.

4. The undisputed fact is that the petitioner made an application for cancellation of their registration under the provisions of TNVAT Act, 2006. Only after the application was presented, the petitioner realised that they had submitted a wrong TIN number of the firm which was carrying on business, whose registration they wanted to cancel and inadvertently, they had mentioned the TIN number of the petitioner, which is a going concern. On realising the mistake, the petitioner submitted a representation to the first respondent on 09.02.2017 stating that while trying to cancel the TIN for another company, they had wrongly filed the application for cancellation of the TIN of the petitioner. Therefore, the petitioner requested to cancel their request for cancellation. The application has to be submitted online and an acknowledgment was given by the department online. Subsequently, notice dated 02.03.2017 termed as verification notice was issued online stating that the petitioner's application for cancellation has been acknowledged and the petitioner was intimated that their place of business will be verified on 03.03.2017 at 17.00 hours and the petitioner was requested to be present in the premises and furnish all the original documents required for causing verification. In the mean time, for the month of January 2017, the petitioner filed their e-returns on 23.03.2017. However, subsequently, the petitioner was asked to receive the e-mail dated 13.04.2017 that the registration under the TNVAT Act, 2006, has been cancelled with retrospective effect form 31.01.2017. On receipt of the cancellation order, the petitioner immediately approached assessing authority with a representation dated 09.06.2017 to restore their registration. Since no action was taken by the assessing authority, the petitioner filed revision petition before the second respondent on 12.06.2017. This revision petition has been dismissed by the revisional authority by order

dated 11.07.2017.

5. Firstly, the revisional authority accepts the fact that the registering authority did not afford an opportunity for personal hearing to the petitioner when Sections 39(14) and 39 (15) of TNVAT Act, 2006, mandates that an opportunity of personal hearing should be granted to the dealer before cancellation. Therefore, the revisional authority fell in error in holding that since the petitioner themselves filed an application for cancellation, the failure to afford an opportunity for personal hearing by the registering authority is not fatal. This finding is incorrect, especially when the petitioner has made a representation to the registering authority stating that due to inadvertence, they filed an application for cancellation for a different company. Secondly, the revisional authority noted that though verification notice dated 02.03.2017 was issued fixing the date of personal inspection on 03.03.2017, the same, though was not done, cannot vitiate the cancellation order, because it is the petitioner's voluntary application. This reasoning given is erroneous, since registering authority was bound to verify the place of business, as per the verification notice dated 02.03.2017. Thus, on both grounds, the revisional authority committed serious error in rejecting the revision petition. These are sufficient grounds to hold that the order passed by the revisional authority dated 11.07.2017 calls for interference.

6. With regard to the cancellation of the petitioner's registration, the same is vitiated on two grounds, namely, the same has been passed without affording an opportunity of personal hearing, which is mandatorily required to be provided and secondly, the cancellation has been done with retrospective effect which is also illegal. Therefore, on these two grounds, the registration cancellation order dated 13.04.2017 calls for interference.

7. For the above reasons, the writ petition is allowed as prayed for and the impugned orders are setaside and the first respondent is directed to restore the petitioner's registration within a period of ten (10) days from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS II)

True Copy

Sub-Assistant Registrar

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To

1.The Assistant Commissioner (CT),
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+1 CC to Mr.V. Sundareswaran, Advocate sr 64662.
+1 CC to Spl. Govt. Pleader sr 64881.

WP.No.21156 of 2017

GJII(CO)
sp(25/09/2017)