IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2017

CORAM

THE HON'BLE Mr. JUSTICE K.RAVICHANDRABAABU

W.P.No.12771 of 2017
and
WMP No. 13626 of 2017

M/s. Vikram Metal Udyog Private Limited
Rep. by its Director, Sukanya.M,
No.177/2, P.H.Road,
703, Legend Apartment, Kilpauk,
Chennai-600 010. ... Petitioner

Vs.

The Assistant Commissioner (CT) (FAC)
Kilpauk Assessment Circle,
No.50, 1st Avenue, Anna Nagar East,
Chennai-600 102. ... Respondent

This writ petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, calling for the records of the files of the respondent in impugned Notice in TIN:33876456525/2016-17 dated 24.04.2017 and further Registration Cancellation Notice TIN:33876456525/2016-17 dated 10.05.2017 and quash the same as illegal, contrary to the provisions of the TNVAT Act and against the principles of natural justice.

For Petitioner : Mr.T.Pramodkumar Chopda
For Respondent : Mr.K.Venkatesh,
Government Advocate

O R D E R

This writ petition is filed by challenging the order dated 24.04.2017 and the notice dated 10.05.2017.

2. In the order dated 24.04.2017, the respondent fixed a sum of Rs.50,00,000/- payable as additional security deposit by the petitioner and called upon them to pay the same within fifteen days on receipt of such notice. In the said order itself, it was indicated that failure would lead to the cancellation of registration without any further notice. The other impugned

proceedings is of notice before cancellation of registration calling upon the petitioner to file their objection within fifteen days by specifically stating the reason that the petitioner has to furnish the additional security deposit for a sum of Rs.50,00,000/- . In other words, the purpose of issuing the notice before cancellation of the registration is clearly to indicate that the petitioner failed to pay such additional security deposit within the stipulated time.

3. Mr.T.Pramodkumar Chopda, learned counsel for the petitioner submitted that the very fixing of additional security deposit of a sum of Rs.50,00,000/- was without affording an opportunity of hearing to the petitioner as required under section 39(5) of the Tamil Nadu Value Added Tax Act, 2006, and therefore, based on such order, the respondent cannot proceed to cancel the registration.

4. The learned Government Advocate submitted that when the petitioner was issued with the communication dated 24.04.2017 calling upon them to pay the additional security deposit, they have not chosen to make said payment and consequently, the impugned notice before cancellation was issued.

5. Heard both sides

6. Perusal of the impugned proceedings dated 24.04.2017, fixing the quantum of additional security deposit and calling upon the petitioner to pay the same within the time stipulated therein would show that the respondent has not followed the requirement of law as provided under Section 39(5) of the said Act by giving an opportunity of hearing to the petitioner before fixing such quantum. The said provision clearly contemplates that no dealer shall be required to furnish any security or additional security under sub-section 4 of section 39 of the said Act, unless he has been given an opportunity of being heard. In this case, the impugned proceeding dated 24.04.21017 does not indicate that the petitioner is given such opportunity.

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7. Learned Government Advocate is also not disputing the above said position. Therefore, it is evident that the impugned proceedings was passed in violation of principles of natural justice and thus, the same cannot be sustained. Consequently, the respondent has to reconsider the issue with regard to the payment of additional security deposit after giving an opportunity of hearing to the petitioner. Accordingly, the writ petition is allowed and the impugned proceedings are set aside. Consequently, the proceedings dated 24.04.2017 is directed to be treated as a notice under Section 39(5) of the said Act and the petitioner is directed to give

their reply to the same within a period of two weeks from the date of receipt of a copy of this order. On receipt of such reply, the respondent shall pass fresh orders on merits and in accordance with law after giving personal hearing to the petitioner. Such order shall be passed by the respondent with a period of four weeks thereafter. It is made clear that based on the order to be passed afresh, further proceedings, if any, can be initiated against the petitioner, if it is so warranted. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vsi/mm

To

The Assistant Commissioner (CT) (FAC)
Kilpauk Assessment Circle,
No.50, 1st Avenue, Anna Nagar East,
Chennai-600 102.

+1 CC to Spl. Govt. Pleader sr 41493

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