IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.12992 of 2017 &
W.M.P.Nos.13865 to 13687 of 2017

M/s. Parasakthi Promoters,
Rep. by its Parter, V.Yuvarajan,
Door No. New 163, Anna Salai,
Chennai - 600 002. ... Petitioner

Vs.

1.The Assistant Commissioner (CT) (FAC),
Anna Salai Assessment Circle, 4th Floor,
PAPJM Commercial Complex Building,
Greams Road, Chennai - 600 006.

2.The Commercial Tax Officer,
Anna Salai Assessment Circle,
Greams Road, Chennai - 600 006. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a WRIT OF CERTIORARIFIED MANDAMUS call for the records relating to the proceedings of the first respondent in Rc No.389/2017/A2 dated 10.04.2017, quash the same and consequently direct the respondents to restore the registration certificate of the petitioner under the TNVAT and CST Act.

For Petitioner : Mr.Raveekumar for
Mr.R.Thirumavalavan

For Respondents : Mr.K.Venkatesh,
Government Advocate

O R D E R

Heard Mr.S.Raveekumar, learned Counsel for Mr.R.Thirumavalavan learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondents. With the consent on either side, the writ petition itself is taken up for disposal.

2.The petitioner is before this Court for the second time for the very same cause of action, as he has not been favoured with the appropriate orders from the respondent in spite of earlier directions in W.P.No.20527 of 2016, dated 17.06.2016. The said writ petition was filed by the petitioner for a direction upon the respondents to restore the registration certificate of the petitioner granted under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) and to treat the petitioner as a registered dealer from the effective date of cancellation. The petitioner's case was that without notice, he has been treated as a dealer who was doing stock business by making such an entry in the official website of the Commissioner of Tax Department. Therefore, it is contended that the cancellation of registration cannot be made without notice and even assuming an order was passed, the same cannot take effect without the order being served on the petitioner. Considering the grievance expressed, this Court by order dated 17.06.2016, directed the representations given by the petitioner to be considered and if an order of cancellation of the registration certificate has been passed and such order has not been served on the petitioner, then an authenticated copy of the said order was directed to be served on the petitioner. Unfortunately, the first respondent did not comply with the said directions.

3.Therefore, the Court can suo motu initiate action for contempt against the respondents. However, the Court does not propose to do so at this juncture, on account of the subsequent developments namely, passing the impugned order dated 10.04.2017. When the writ petition was heard earlier, this Court was of the prima facie conclusion that the impugned order is wholly unsustainable and against the directions issued in the earlier Writ Petition. Therefore, while granting an order of interim stay, the respondents were directed to produce the file relating to the petitioner on the next hearing date. Though such a direction was issued, the files have not been produced before this Court when the matter was heard today.

5.The learned Government Advocate would submit that he had spoken to the Assessing Officer, who was informed him that the files are not available and not traceable. Thus, it can be safely presumed that there is no record to show that the notice was issued to the petitioner prior to cancellation of his registration, there was no written order to the said effect and it is a mere entry in the official website. It is a settled legal position that unless and until an order is communicated, the same cannot take effect (see Bachhittar Singh vs. State of Punjab reported in AIR 1963 SC 395, Laxminarayan R.Bhattad v. State of Maharashtra reported in (2003) 5 SCC 413 and Biproasz Bipron Trading SA vs. Bharat Electronics Limited (BEL) reported in (2012) 6 SCC 384) wherein it has been held as follows:

> "33.The aforesaid observations make it clear that an order passed by an authority cannot be said to take effect unless the same is communicated to the party affected. The order passed by a competent authority or by an appropriate authority and kept with itself, could be changed, modified, cancelled and thus denuding such an order of the characteristics of a final order. Such an uncommunicated order can neither create any rights in favour of a party, nor take away the rights of any affected party, till it is communicated."

6.In the light of the above undisputed factual position, it is clear that the cancellation of the petitioner's registration was illegal. Furthermore, retrospective cancellation with effect from April 2012 is also bad in law is held by this Court in several decisions one of which is in the case of Visku Enterprises, Rep. by Proprietrix Rekha Modi v. The Assistant Commissioner (CT), Kothawalchavadi Assessment circle, W.P.No.41583 of 2016 dated 28.11.2016.

7.For all the above reasons, the impugned order calls for interference. Accordingly, this writ petition is allowed, the impugned order is set aside and the respondents are directed to restore the petitioner's registration certificate with effect from 01.04.2012 and receive the returns which have been filed by the petitioner and proceed to complete the assessment in accordance with law and in terms of the directions issued in W.P.Nos.24072 to 24075 of 2016 dated 14.07.2016. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

abr/pbn

To

1.The Assistant Commissioner (CT) (FAC),
Anna Salai Assessment Circle, 4th Floor,
PAPJM Commercial Complex Building,
Greams Road, Chennai - 600 006.

2.The Commercial Tax Officer,
Anna Salai Assessment Circle,
Greams Road, Chennai - 600 006.

+1cc to the Special Government Pleader Taxes
sr 48322
+1 cc to Mr.R.Thirumalaraman Advocate sr 48720

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mv(co)
aa03/08/2017