IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.9.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NO.24568 OF 2017 & WMP.NOS.25930 & 25931 OF 2017

Tvl.C.K.Constructions, rep.by
its Proprietor C.K.Nataraj ...Petitioner

Vs

The Assistant Commissioner (CT)
(FAC), Namakkal Assessment Circle,
Namakkal. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the files of the respondent in TIN : 33283121931 dated 08.8.2017 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan
For Respondent : Mr.K.Venkatesh, GA

ORDER

Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal, more particularly when the matter is covered by two decisions of this Court.

2. The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006. The petitioner is engaged in civil engineering construction contract and is a proprietorship concern with one Mr.C.K.Nataraj as the sole proprietor. There is no allegation with regard to any default committed by the petitioner - dealer.

3. It appears that the petitioner wanted to make the proprietorship concern as a partnership firm by including two persons; one of whom being the wife of the proprietor - Tmt.S.Vidya and the other is Tmt.K.Chinnammal, W/O P.Karuppan. The terms of the partnership were reduced into writing in the form of a deed of partnership dated 01.4.2017. Along with the partnership deed, the petitioner made a request to the

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respondent by letter dated 17.4.2017 to permit the existing partnership concern to change its constitution as a partnership concern. However, the respondent rejected the same without assigning any reason by merely saying that the reasons cannot be accepted.

4. An identical issue came up for consideration before this Court in the case of Sri Kamatchi Gas Service, Kancheepuram Vs. AC (CT), Kancheepuram Assessment Circle, Kancheepuram [W.P.Nos.24587 & 24588 of 2015 dated 30.9.2016. In the said case, the dealer was a proprietorship concern with one Thiru.K.Punniakoti Mudaliar as the sole proprietor. Because of his advanced age and illness, the proprietorship concern was converted into a partnership firm by including his son P.Srikanth and they were carrying on business of LPG dealership and filing regular returns. After the demise of the proprietor, the son, who was inducted as a partner, became the sole proprietor and the proprietorship concern was converted into a partnership firm, which was not intimated to the Department within 30 days. However, when he applied for appropriate change in the registration certificate, the same was rejected stating that the proprietorship concern could not have been changed into a partnership firm and the partnership firm cannot be now reverted back as a proprietorship concern. Ultimately, for two assessment years, the Assessing Officer reversed the claim of input tax credit from the date on which, the sole proprietor died. The correctness of those orders was challenged before this Court and by a common order dated 30.9.2016, the writ petitions were allowed. At this juncture, it will be useful to refer to the relevant portions of the order dated 30.9.2016, which read thus :

> "9. Referring to Rule 5(3) of the Tamil Nadu Value Added Tax Rules, 2007, it is submitted that the purpose of the Rule is to intimate the Department, so that the Registering Authority can incorporate the changes in the certificate of registration and no further consequences are contemplated under the provisions of the Act for non furnishing or non intimation of the change in the constitution of the dealer. Therefore, the failure to furnish details of the change in the constitution for a brief period can, at best, be treated as an irregularity and cannot be termed as illegality.
>
> ....
>
> 11. After hearing the parties elaborately and perusing the materials placed on record, this Court is of the view

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> that the mistake committed by the dealer can be treated only as an irregularity and not an illegality. Rule 5(3) of the said Rules states that whenever there is a change in constitution of the business of the dealer, the said dealer, within 30 days from the date of change in constitution, shall furnish details of the change to the Registering Authority and the Registering Authority, on satisfying itself, shall amend the certificate of registration accordingly.
>
> 12. As rightly pointed out by the learned counsel for the petitioner, the Rule does not contemplate the consequences for non furnishing of information pertaining to change in constitution. The question would be as to whether all the transactions done during the interregnum could be invalidated for such a reason.
>
> 13. Rule 5(4)(b) of the said Rules states that when a registered dealer dies, his executor, administrator or legal representative shall, within 30 days of his taking charge as such executor, administrator or legal representative, furnish details in Form E prescribed under the Rules to the Registering Authority. Therefore, the Statute recognizes the executor, administrator or legal representative of the deceased registered dealer to continue the registration and all that is required is that the details shall be furnished in statutory format."

5. The above referred to decision was followed by this Court in the case of Senthil Pharma Agencies vs. AC(CT), Dharmapuri Assessment Circle, Dharmapuri [WP.No.7292 of 2017 dated 24.3.2017] wherein an identical order to that of the impugned order herein was set aside.

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6. In the light of the admitted legal position that there is no legal embargo for converting a proprietorship concern into a partnership firm, the respondent could not have rejected the petitioner's representation, that too, by a non speaking and cryptic order. For the above reasons, the impugned order is held to be bad in law.

7. Accordingly, the writ petition is allowed, the impugned order is set aside and the respondent is directed to take into

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consideration the partnership deed dated 01.4.2017 and make necessary corrections in the registration certificate of the petitioner to enable them to continue as a partnership firm. The above direction shall be complied with within a period of 15 days from the date of receipt of a copy of this order. No costs. Consequently, the above WMPs are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Asst. Commissioner (CT) (FAC),
Namakkal Assessment Circle,
Namakkal.

+1cc to Mr.Senniappan, Advocate Sr. 66700
+1qc to the Government Pleader Sr. 66731

WP.No.24568 of 2017 &
WMP.Nos.25930 & 25931
of 2017

MG(CO)
VR(27/10/2017)

HIGH COURT OF JUDICATURE MADRAS
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