IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.15210 of 2017
and
W.M.P Nos.16495 to 16497 of 2017

M/s. Lakshmi Gas Agencies,
represented by its Proprietor
Mr.T.Kanniappan
No.22, Ussoor Main Road,
Periya Allapuram,
Thorapadi,
Vellore – 632 002. ...Petitioner

Vs.

1. The Assistant Commissioner (CT) (FAC)
   Vellore (Rural) Assessment Circle,
   Vellore.

2. The Commercial tAx Officer,
   Vellore (Rural) Assessment Circle,
   Vellore. Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified Mandamus to call for the impugned proceedings of the first repsondent dated 31.12.2015 and quash the same as passed without granting opportunity to the petitioner as contemplated under section 39(14) & 39(15) of the TNVAT act and further direct the first repsondent ot restore the TIN: 33654321375 of the petitioner.

For Petitioner :Mr. P.Rajkumar

For Respondents :Mr.S.Kanmani Annamalai,
Addl.Government Pleader.

ORDER

The petitioner is aggrieved against the order of the 1st respondent dated 31.12.2015 cancelling the registration of the petitioner under the Tamil Nadu VAT Act, 2006.

2. Heard Mr.P.Rajkumar, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents.

3. The main contention raised before this Court in challenging the impugned proceedings is that the petitioner was not given opportunity of personal hearing before passing the impugned order. Apart from saying so, the learned counsel for the petitioner also informed this Court that the petitioner subsequently filed the rectified return along with tax and therefore, there cannot be any impediment for the 1st respondent to reconsider the issue once again, after giving due opportunity of personal hearing to the petitioner.

4. Learned Additional Government Pleader, based on instruction, submitted that before passing the impugned order, the petitioner was, in fact, given a notice on 20.10.2015 and however, they have chosen to file their rectified return along with tax only after passing of the impugned order on 31.12.2015. Though he submitted so, the learned Additional Government Pleader is fair enough to admit the factual position that the petitioner was not given an opportunity of personal hearing before passing the impugned order as required under Section 39(15) of the Tamilnadu VAT Act.

5. Upon hearing the learned counsel appearing on either side and perusing the materials placed before this Court, more particularly, the impugned order dated 31.12.2015, it is evident that the petitioner was not given an opportunity of personal hearing, even though the notice dated 20.10.2015 was issued on them. Apart from the said reason, this Court is inclined to interfere with the impugned order on another ground, namely, it is a non-speaking order. Absolutely, there is no reference whatsoever as to what is the reason on which the impugned cancellation was made except referring a notice dated 20.10.2015. Needless to say that the reason set out in the notice should be considered and a finding be given in the order as to how those reasons set out in the notice are found to be correct. In this case, it has not

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been done so. Therefore on both grounds, this Court is inclined to interfere with the impugned order. Accordingly, the writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the 1st respondent for passing a fresh order, after giving due opportunity of personal hearing to the petitioner. Such exercise shall be done by the 1st respondent within a period of six weeks from the date of receipt of a copy of this order. Since this Court has set aside the impugned order, the 1st respondent shall restore the registration immediately on receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

23.06.2017

Index:Yes/No
Internet:Yes/No
Speaking order/Non-speaking order
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Note: Issue order copy on or before 27.06.2017

To
1. The Assistant Commissioner (CT) (FAC)
   Vellore (Rural) Assessment Circle, Vellore.

2. The Commercial tAx Officer,
   Vellore (Rural) Assessment Circle, Vellore.

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