IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2017

CORAM :

The Hon'ble MR.JUSTICE T.S.SIVAGNANAM

W.P. No.16364 of 2017
and W.M.P.Nos.17675 to 17677 of 2017

M/s.Sri Loga Madha Traders
Rep. By its Proprietrix, Mrs.Mahalakshmi. .. Petitioner

-vs-

The Assistant Commissioner (CT),
JJ Nagar Assessment Circle (FAC),
Chennai. .. Respondent

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records of the respondent in Cancellation.id: 10101152496534 dated 13.12.2016, quash the same and further direct the respondent to restore the registration in TIN:33886328324 and thereafter take action in accordance with the procedure under the Tamilnadu Value Added Tax Act, 2006.

For Petitioner : Mr.V.Sundareswaran

For Respondents : Mr.S.Kanmani Annamalai
Additional. Govt. Pleader

O R D E R

Heard Mr.V.Sundareswaran, learned counsel for the petitioner and Mr.Kanmani Annamalai, learned Additional Government Pleader for the respondent. With the consent of learned counsel on either side, the writ petition itself is taken up for disposal.

2.The petitioner registered themselves as a dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and a registration certificate was issued to them on 29.07.2015. The petitioner would state that they have been regularly filing e-returns till June, 2016.

However, on account of the hospitalisation of the proprietrix of the petitioner, they were unable to file the returns in time for the period from July, 2016 to October 2016. When the writ petitioner attempted to file the return for the month of December, 2016, they were unable to access the website of the department on account of the fact that the petitioner's registration certificate was cancelled with retrospective effect from 01.09.2015. According to the petitioner, they have filed returns and paid taxes upto February, 2017. However, due to reasons beyond the control of the petitioner, for a short period they could not file returns, but subsequently they had filed returns and paid the taxes also. Further, it is contended that before passing the impugned order, the petitioner was not issued any notice.

3.The Court, on being satisfied with the prima facie case made out by the petitioner, ordered notice to the respondent.

4.The respondent seeks to sustain the impugned order by stating that monthly returns for August 2015 to October 2016 has not been filed and therefore, cancellation was done, after issuing notice dated 13.12.2016. But, there is nothing on record to show that the said cancellation notice was served on the petitioner and in spite of giving time to file objections, the petitioner failed to file objections. That apart, there is no denial of the fact that the monthly returns for August 2016 to February 2017 has been submitted to the respondent and received by the office of the respondent by endorsing in the letter delivery book dated 06.04.2017.

5.Thus, considering the peculiar facts and circumstances of the case and taking note of the fact that the respondent has not been able to conclusively prove before this Court that the show cause notice was served on the petitioner and the cancellation of the registration certificate being retrospective in nature, the Court is inclined to interfere with the impugned order.

6.One more important and very relevant factor to be taken note of is that the cancellation notice is dated 13.12.2016 and the cancellation order is also dated 13.12.2016. This one ground is sufficient to hold that the impugned order of cancellation is illegal.

7.Accordingly, the writ petition is allowed. The impugned order is set aside and the matter is remanded back to the respondent with a direction to restore the petitioner's registration certificate with effect from the date on which it was cancelled, i.e., 01.09.2015 and permit the petitioner to continuously file returns and pay tax. This direction be completed within a period of two (2) weeks from the date of receipt of a copy of this order. No costs. Consequently, W.M.P.Nos.17675 to 17677 of 2017 are closed.

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

sra

To

The Assistant Commissioner (CT),
JJ Nagar Assessment Circle (FAC),
Chennai.

+1 CC to Ms. V. Sundareswaran, Advocate sr 56343

W.P.No.16364 of 2017

CP(CO)
sp(21/08/2017)