IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.27452 of 2017

Tvl.MNH Infra & Electropower (P) Ltd.,
rep by its Authorised Signatory,
Mr.Harvinder Singh,
SBIOA CC Enclave,
Mambakkam,
Thirukazhukundram - 600 127. ...Petitioner

Vs.

1. The Joint Commissioner (CT)
Chennai (South) Division,
Chennai 600 006.

2. The Assistant Commissioner(CT)
Thirukazhukundram Assessment Circle
Thirukazhukundram - 600 127. ..Respondent

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari calling for the records of the first respondent in Rc.5267/2017/B1 dated 30.08.2017 and quash the same as arbitrary, illegal and pass orders.

For Petitioner : Mr.T.V.Ganesh
For Respondent : Mr.K.Venkatesh, Government Advocate.

O R D E R

Heard Mr.T.V.Ganesh learned counsel for the petitioner and Mr.K.Venkatesh learned Government Advocate accepting notice for the respondent. By consent, the writ petition itself is taken up for final disposal.

2.The petitioner is before this Court challenging the proceedings of the first respondent dated 30.08.2017, by which, a revision petition filed by the petitioner against the order passed by the second respondent canceling the petitioner's registration under the provisions of the Tamil Nadu Value Added Tax Act,2006, was rejected on the ground that it has been filed beyond the period of 30 days.

3. Before, this Court examines as to the correctness of the impugned proceedings, it would be necessary to see as to on what basis the second respondent had canceled the petitioner registration under the said Act.

4. A notice dated 23.02.2017 was issued to the petitioner under Section 39(14) of the said Act proposing to cancel the petitioner's registration on the ground that the petitioner has not filed monthly returns for three consecutive months.

5. The petitioner, in the affidavit filed in support of the writ petition, states that on receipt of the notice, which was a communication through e-mail, the petitioner's authorized representative met the second respondent in person and produced proof to show that they have filed returns for all the three months though belatedly and remitted the tax as per self assessment and produced acknowledgment for filing e-returns. However, the second respondent, by the proceedings dated 23.02.2017, has canceled the registration for the reason that the petitioner has not responded to show cause notice dated 23.02.2017.

6. If the petitioner had filed e-returns and also remitted taxes, for which, they are in a possession of acknowledgment, obviously, the second respondent would be aware of the same, as the entire data has been computerized. Therefore, while canceling the registration, the second respondent should have confirmed as to whether the returns have been filed by the petitioner belatedly and as to whether the tax has been remitted. Thus, the reason assigned in the cancellation order dated 23.2.2017 is not sustainable. That apart, in terms of Sub-Section (15) of Section 39 of the said Act, before such order of cancellation is passed the dealer is entitled to be given an opportunity of personal hearing. That has not been done by the second respondent.

7. This Court is fully convinced that the order of cancellation of the registration dated 23.02.2017 is not sustainable in law. Having being convinced that the cancellation order itself is illegal, this Court has no hesitation to mold the relief sought for by the petitioner.

8. Thus, for the above reasons, the writ petition is allowed as prayed for and the order passed by the first respondent is set aside and for the reasons assigned in the preceding paragraphs, the order of cancellation of the petitioner's registration dated 23.02.2017 is also set aside and the second respondent is directed to restore the petitioner's registration and consider the belated returns

filed by the petitioner for the months of July to November 2016 and proceeded to complete the assessment in accordance with law.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

Rs/smn

To.

1. The Joint Commissioner (CT) Chennai (South) Division, Chennai 600 006.

2. The Assistant Commissioner(CT) Thirukazhukundram Assessment Circle Thirukazhukundram - 600 127.

+1 CC to Mr.T.V.Ganesh, Advocate vide Sr.75470

+1 CC to Special Government Pleader (Taxes)

CO-GJ
ths : 17.11.2017

W.P.No. 27452 of 2017