IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2017

CORAM

THE HON'BLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.18030 of 2017

M/s.Sai Monee Projects,
M/s.Rep.by its Partner,
No.N.No.37/0.No.34, Door No.C1,
Vellalar Street,
Mogappair,
Chennai-600 037. ... Petitioner

Vs.

The Assistant Commissioner (CT),
JJ Nagar Assessment Circle,
Anna Nagar,
Chennai-600 040. ... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, to call for the records for the proceedings of the cancellation of registration orders published in the departmental web site by the respondent during the period 01.08.2016 to 31.08.2016 based on the computer generated notice and cancelled as per the proceedings of the respondent in Pdl 178/2016/A2 dated 16.08.2016 and quash the proceedings of cancellation of sales tax registration and direct the respondent to restore the sales tax registration under TNVAT.

For Petitioner : Mr.C.Baktha Siromoni
For Respondent : Mr.K.Venkatesh,
Government Advocate

O R D E R

Heard Mr.C.Baktha Siromoni, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepting notice on behalf of the respondent. With the consent on either side, the writ petition is taken up for disposal.

2.The petitioner was registered as a dealer on the file of the respondent under the provisions of Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) and the Central Sales Tax Act, 1956

(CST Act). By the impugned proceedings dated 16.08.2016 and a true copy of which had been served on the petitioner dated 07.07.2017, the petitioner has been intimated that the registration has been cancelled. In the show cause notice dated 17.07.2016, the reason stated is that the petitioner has not filed the annual return in Form I-1 for the year 2015-16 and hence, their VAT and CST may be cancelled.

3.According to the petitioner, they had no notice to the said show cause notice as it appears to have been sent through the Net. However, the petitioner has filed the manual return for the year 2015-16 and a copy of which has been filed in the typed set of papers. On a perusal of the impugned order, it is seen that the respondent has accepted the fact that the petitioner has filed the Nil return for the year 2015-16. Therefore, there was no cause of action for the respondent to cancel the registration as the dealer who had no business activities has reported Nil turnover. Therefore, the impugned order is an outcome of non-application of mind. Furthermore, in the impugned order there is a reference to the letter of the dealer dated 18.05.2017. Initially, this Court is of the view that the said letter was a reply to the show cause notice. However, the learned counsel for the petitioner explained that the said letter was a request for transfer of the registration under the CST regime and only at that stage, the petitioner was informed that his registration has been cancelled on 16.08.2016 and after obtaining a true copy of the same has challenged it by way of this writ petition.

4.In the case of Sri Selva Ganesh Traders Vs. Commercial Tax Officer, Pollachi reported in (2007) 9 VST 411 (Mad), it was held that a reading of the provisions of the TNVAT Act confirms that the dealer should be heard before cancelling the license or registration issued by the competent Authority and when such an opportunity was not granted to the dealer, the order of cancellation was held to be bad in law. In the case of the Indo Germa Products Limited Vs. Assistant Commissioner (CT), Thiruvottiyur Assessment Circle, reported in (2011) 45 VST 236 (Mad), it was held that under Sub-Section (15) of Section 39 of the TNVAT Act what was contemplated was a personal hearing and personal hearing to be given to the dealer is different from issuance of show cause notice and since the order of cancellation of the registration was without affording an opportunity of personal hearing was set aside.

5.In the light of the above, the reason assigned by the respondent in the impugned order is not tenable owing to the fact that the petitioner had filed Nil return for the year 2015-16, which has been admitted by the respondent in the impugned order. For the above reason, the writ petition is allowed, the impugned order is set aside and the respondent is directed to restore the petitioner's registration within a period of seven days from the date of receipt of a copy of this order. No costs.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

gsk/cse

To

The Assistant Commissioner (CT),
JJ Nagar Assessment Circle,
Anna Nagar,
Chennai-600 040.

+1cc to M/S.C.Bakthasiromoni, Advocate Sr. 49856
+1cc to the Special Government Pleader, Sr. 50100

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PPA(CO)
VR(11/8/2017)