NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No.104 of 2015

Dhansar Engineering Company Private Limited, a company registered under the Indian Companies Act, 1956, having its office at Dhansar, P.O. & P.S.Dhansar, District-Dhanbad-828106 (Jharkhand), its office in the State of Chhattisgarh, at Magarpara Road, Opposite L.I.C. Office, Bilaspur, District Bilaspur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh through the Secretary, Department of Commercial Taxes, having its office at Mahanadi Bhawan, Mantralaya, Naya Raipur, Mandir Hasod, District Raipur (CG)
2. Assistant Commissioner of Commercial Taxes, Office of the Commercial Taxes Officer, Bilaspur, Circle-2, Sales Tax Bhawan, Beside District Court, Bilaspur-495001 (CG)

---- Respondents

For Petitioner:	Mr.Amrito Das, Advocate
For Respondents:	Mr.Gary Mukhopadhyay, Government Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

27/04/2018

1. The petitioner was granted provisional registration certificate on 17.6.2015 and same was cancelled stating that an amount of ₹116.20 lacs is outstanding against the petitioner. Against which, this writ petition has been filed by the petitioner herein.

2. Mr.Amrito Das, learned counsel appearing for the petitioner, would submit that registration certificate once granted under Rule 12 of the Chhattisgarh Value Added Tax Rules, 2006 can be cancelled only in accordance with the provisions contained in Section 16 (4) (c) of the Chhattisgarh Value Added Tax Act, 2005 (hereinafter called as “the Act of 2005”). Therefore, cancellation without

following the procedure prescribed in Section 16 (4) (c) of the Act of 2005 is unsustainable and bad in law.

3. On the other hand, Mr.Gary Mukhopadhyay, learned Government Advocate appearing for the respondents/State, would submit that oder is revisiable under Section 14 of the Act of 2005.

4. I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and also gone through the records with utmost circumspection.

5. True it is, the petitioner was granted provisional registration certificate, which has been cancelled.

6. Section 16 (4) (a) (b) and (c) of the Act of 2005 provides as under:-

> "**16. Registration of dealers**--------
>
> (4) (a) On the day the application for grant of a registration certificate as required by sub-section (1) or sub-section (2) is received, the said authority shall grant the applicant a registration certificate in the prescribed form.
>
> (b) After issue of the registration certificate on application referred to in clause (a), the Commissioner shall verify the particulars given in the application in such manner as may be prescribed.
>
> (c) If the Commissioner on verification under clause (b) is satisfied that the particulars given by the applicant in his application are incorrect or that the applicant has misrepresented certain facts, he shall, after giving the applicant an opportunity of being heard and recording the reasons in writing, cancel the registration certificate issued to the applicant under clause (a) in accordance with the provisions of clause (c) or clause (e) of sub-section (10) from the date of its issue, not later than thirty days of the date of receipt of the application."

7. A focused glance of the aforesaid provision would show that registration certificate granted can be cancelled only after giving an opportunity of being heard and recording the reasons in writing .

8. In the present case, it is not in dispute that the provisional registration certificate has been cancelled without affording an opportunity of hearing to the petitioner and without recording the reasons except outstanding penalty, which is in teeth of the provisions contained in Section 16 (4) (c) of the Act of 2005.

9. Consequently, the the impugned orders dated 1.7.2015 (Annexure P/1) and 13.7.2015 (Annexure P/2) are hereby quashed. The matter is remitted to the Registration Authority for hearing and disposal in accordance with law.

10. This Court by order dated 29.7.2015 directed that grant of provisional registration certificate which has been granted subject to deposit of 50% penalty amount along with amount of bank guarantee of the balance amount, that amount will continue to be deposited with the Commercial Tax Officer, Bilaspur till the disposal of penalty proceedings and this proceedings. Since the amount of penalty to the extent of 50% has already been deposited along with bank guarantee of the balance amount, the petitioner will be entitled to continue till the final disposal of penalty proceedings which has been remanded back by order dated 27.4.2018 in WPT No.105/2015 (Dhansar Engineering Company Private Limited v. State of Chhattisgarh and others) and this proceeding.

11. The writ petition is allowed to the extent indicated hereinabove. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-