IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2018

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.Nos.253 and 279 of 2018

W.P.No.253 of 2018

M/s.N.G.Brothers
Represented by its Partner
Mr.Naresh Kumar Kothari
No.1, Thalamuthu Natarajan Building
Gandhi Irwin Road, Egmore
Chennai - 600 008 ... Petitioner

Vs.

The Assistant Commissioner
Commercial Tax Department
Egmore Assessment Circle
No.88, Mayor Ramanathan Salai
Chetpet, Chennai - 600 031 ...Respondent

Prayer: Writ Petitions filed under Article 226 of Constitution of India, to issue a Writ of Mandamus to direct the respondent to furnish the order of cancellation of Registration Certificate in TIN No.33900542166, if any to enable the petitioner to redress the grievance.

W.P.No.279 of 2018

M/s.N.G.Brothers
Represented by its Partner
Mr.Naresh Kumar Kothari
No.1, Thalamuthu Natarajan Building
Gandhi Irwin Road, Egmore
Chennai - 600 008 ... Petitioner

Vs.

The Assistant Commissioner
Commercial Tax Department
Egmore Assessment Circle
No.88, Mayor Ramanathan Salai
Chetpet, Chennai - 600 031 ...Respondent

Prayer: Writ Petitions filed under Article 226 of Constitution of India, to issue a Writ of Mandamus to direct the respondent to withdraw the status of the Registration Certificate of the petitioner being TIN No.33900542166, which is shown as "Cancelled"in the website and to restore the registration certificate in TIN No.33900542166.

For Petitioner : Mr.Mohammed Shaffiq
For Respondent : Ms.G.Dhanamadhri
Government Advocate

O R D E R

Heard Mr.Mohammed Shaffiq, learned counsel for the petitioner and Ms.G.Dhanamadhri, learned Government Advocate appearing for the respondent.

2.The petitioner has filed these writ petitions for the following reliefs:

i) In W.P.No.253 of 2018, the petitioner seeks for a direction upon the respondent to furnish the copy of the order cancelling their Registration under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act).

ii) In W.P.No.279 of 2018, the petitioner seeks for a direction upon the respondent to withdraw the status of the Registration Certificate, which is shown as "Cancelled" in the website and to restore the registration certificate.

3.The reason, which is stated by the respondent in the written instruction given to the learned Government Advocate vide letter dated 17.01.2018, is that the Deputy Commercial Tax Officer enquired in the locality, where the petitioner's registered place of business was situated and found that petitioner is not carrying on business in that place and concluded that he is a non-existing dealer. Further, the Assessing Officer states that the petitioner has not filed their annual return and the notice sent to them prior to the cancellation of the registration was returned with an endorsement 'No such person' and therefore, the registration was cancelled.

4. Along with the writ petition, in the typed-set of papers in Page No.23, the petitioner has filed the computer generated acknowledgment for filing the annual return for the year 2015-16. Therefore, this Court directed the learned Government to get specific instruction on this aspect. Accordingly, the learned Government Advocate has obtained instructions and also produced the relevant file maintained in the office of the respondent. The file does not show that the cancellation of the registration was on account of non-filing of the returns. In fact, such a stand could not have been taken as there is an electronic acknowledgment produced by the petitioner to prove that he has filed the return through on-line on 02.05.2016. Thus, the cancellation of the registration appears to be solely based upon report of the Deputy Commercial Tax Officer, which in fact is a report submitted by another officer of the Department. In any event, before cancellation of the registration, procedure required to be complied with under sub-sections (14) and (15) of Section 39 of the Act has to be mandatorily complied with. This having not been done, cancellation of the petitioner's Registration is held to be not sustainable in law.

5. Accordingly, the respondent is directed to restore the petitioner's registration under the provisions of the TANVAT Act within a period of two weeks from the date of receipt of a copy of this order.

The writ petitions are disposed of with the above terms. No costs.

Sd/-

ASSISTANT REGISTRAR

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To

The Assistant Commissioner
Commercial Tax Department
Egmore Assessment Circle
No.88, Mayor Ramanathan Salai
Chetpet, Chennai - 600 031

+1 CC to the Government Pleader SR.NO.4929

W.P.Nos.253 and 279 of 2018

GMI(CO)
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