BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 21.03.2019
CORAM
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
W.P.(MD).No. 15681 of 2015
and W.M.P.(MD) Nos. 1 to 3 of 2015

Anil Kumar Bishnol
M/s. Naresh Enterprises. ... Petitioner

-vs-

The Assistant Commissioner
Palani - I, Palani. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ or order or direction more in the nature of Writ of Certiorari calling for the records on the file of the respondent in the impugned proceedings in Pdl:178/2015/A2, dated 16.07.2015 quash the same as being contrary to law and violative of the principles of natural justice.

For Petitioner : Ms. S. Mahalakshmi
for Ms.R.Hemalatha

For Respondent : Mr.D. Muruganantham,
Additional Government Pleader

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O R D E R

The instant writ petition has been filed challenging the order, dated 16.07.2015, passed by the respondent in the impugned proceedings in Pdl.178/2015/A2.

2. It is the case of the petitioner that they are a registered dealer under the TNVAT Act, 2006, and they are doing business of trading in Plywoods, PVC doors, Hardware, etc., along with other allied products.

3. It is the further case of the petitioner that they intended to start a business at No.156A, Dindigul Road, Palani - 624 601, Palani District and applied for registration before the respondent herein and was duly granted registration vide registration certificate in Form D certificate, dated 01.04.2015 to take effect from 22.03.2015.

4. It is the further case of the petitioner that they wanted to open another branch at Shop No.40-49, Devangapet Street, No.3, IG Towers, Coimbatore-1, for which they had also applied for registration by paying the registration fees on 08.05.2015. According to the petitioner, they had filed monthly returns for the first two months from April 2015 and May 2015, after obtaining registration certificate on 22.03.2015. According to the petitioner,

without affording an opportunity to the petitioner, the respondent cancelled the registration certificate, dated 01.04.2015 issued to the petitioner, by their impugned proceedings, dated 16.07.2015. According to the petitioner, they are still continuing to do the business in the registered office. But, without giving an opportunity to the petitioner, the respondent has cancelled the registration certificate on the ground that notice sent to the petitioner in the cancellation proceedings was returned with the endorsement "Door locked/No such Address at Palani". Aggrieved by the cancellation of the registration certificate by the impugned proceedings, the instant Writ Petition has been filed.

5. Heard Ms.S. Mahalakshmi, learned counsel for the petitioner, Mr.D. Muruganantham, learned Additional Government Pleader for the respondent.

6. The learned counsel for the petitioner after drawing the attention of this Court to the impugned proceedings made reference to the following authorities to the Madras high Court:

1. Sukhi Iron & Steel Company Vs. Assistant Commissioner (CT), Thiruvanmiyur Assessment Circle, Chennai, reported in 2013 (60) VST 530 (Mad).
2. Indo Germa Products Limited Vs. Assitant Commissioner (CT), Thiruvottiyur Assesment Circle, Chennai, reported in 2011(45) VST 236 (Mad).

Referring to the above judgments, learned Counsel for the petitioner would contend that since adequate opportunity was not granted to the petitioner in the cancellation proceedings, the impugned proceedings will have to be quashed. According to the learned counsel for the petitioner, in the instant case, the only notice sent by the respondent to the Branch Office of the petitioner at Coimbatore was returned with endorsement "Door locked/No such addressee". Further according to the learned counsel for the petitioner, eventhough, residential address of the petitioner is mentioned in the impugned proceedings, no notice was sent by the respondent to the petitioner's residence. According to the learned counsel for the petitioner, eventhough, the respondent knows the address of the principal place of the address, which is the registered address they have not chosen to send the notice to the principal place of the petitioners business.

7. Rule 19 (1) of the Tamil Nadu VAT Act, 2007, reads as follows:

> "Service of notices summons or orders.- the service on a dealer of any notice, summon or order under the Act or these rules may be effected either electronically or manually in any of the following ways, namely :---------------"

As seen from Rule 19(1), notice, summons under the Tamil Nadu Value Added Tax Act will have to be effected either electronically or manually only in any of the ways mentioned above.

Rule 19 (d) of the Tamil Nadu VAT Act, 2007, reads as follows:

"19(d) : if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence in the presence of two independent witnesses. Since according to the respondent, the notice could not be served, the respondent ought to have affixed the same in some conspicuous place at the door or known place in the presence of two independent witnesses.

8. According to the petitioner, in the instant case, it is not done so. But the respondent has sent the notice only by registered post to the Branch office which has also been returned for the reason Door locked. Therefore, according to the petitioner, the respondent has not followed the procedures for service of notice as contemplated under Rule 19(1)(d) of the TNVAT Act, 2007.

9. Per Contra, the learned Additional Government Pleader would submit that the notice for cancellation was sent by the respondent only to the correct address where the petitioner is carrying business under its registered address as well as to the residential address of the petitioner. He also filed a typed set of papers before this Court today and he referred to the cancellation notice, dated 12.06.2015 wherein an endorsement has been made that the said notice was affixed in the premises of the petitioner on 12.06.2015. Therefore, according to him sufficient notice has been given to the petitioner, before cancellation of the registration.

Discussion :

10. It is the case of the petitioner that the respondent has not followed the procedure for service of notice as contemplated under Rule 19(1)(d) of TNVAT Act, 2007. In the instant case, eventhough, the learned Additional Government Pleader has produced before this Court an endorsement made in the cancellation notice and that the said notice was affixed at the petitioner's premises, this evident that which has not been done in the presence of two independent witnesses.

11. The provision for cancellation of registration certificate is stipulated under Section 39(14) and (15) of the Tamilnadu VAT Act, 2006 which reads as follows:

> Section 39(14) : The authority granting the certificate of registration may, by order, for good and sufficient reasons to cancel, modify or amend any certificate of registration granted by it.
>
> Section 39(15) : No application for registration or for a copy or duplicate of the certificate under this section shall be refused and no order under sub-section (14) shall be made, unless the dealer concerned has been given an opportunity of being heard.

12. It is evident from Section 39(15) of the TNVAT Act that the cancellation of registration certificate shall be made by the respondent only after hearing the petitioner. In the instant case,

the petitioner continues to do the business even now. It is not a case whether continuous to do the business even on the date of the impugned proceedings and thereafter too. But in the case on hand by virtue of one notice which was returned for the reason of Door locked. The respondent has cancelled the registration in favour of the petitioner by impugned proceedings.

13. The learned Counsel for the petitioner referred to the following authorities in support of his submissions:

1. 2013 (6) VST 530 (Mad), Sukhi Iron & Steel /Vs/ AC (CT)
2. 2013 (58) VST 58(Mad), F.K.M. Steels & Others /Vs/ AC (CT)

The aforesaid Judgments are applicable for the facts of the instance case. Personal hearing was not afforded to the petitioner before cancellation of registration by the respondent. In the reported Judgments cited supra, cancellation of registration can be done only after affording sufficient opportunity and personal hearing also will have to be afforded.

14. For the foregoing reasons, it is clear that the respondent has not followed the principles of natural justice by before passing the impugned assessment order and they have not followed the procedures as contemplated Rule, 19(1) of the TNVAT Act, 2007 and have also not afforded sufficient opportunity in accordance with the Rule, 39(14) & (15) of the TNVAT Act, 2006.

15. In the result, the impugned proceedings dated, 16.07.2015 in PDL:178/2015/A2, passed by the respondent, is hereby quashed and the matter is remanded back to the respondent for fresh consideration in accordance with law, who shall pass final orders after giving sufficient opportunity to the petitioner including granting him the right of personal hearing, within a period of eight (8) weeks, from the date of receipt of a copy of this order.

16. With the aforesaid direction, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-III)

/TRUE COPY/

Sub Assistant Registrar(CS)

To
The Assistant Commissioner,
Palani – I, Palani.

+1 CC to M/s.SPL GP (SR-55954[F] dated 22/03/2019)

W.P.(MD).No. 15681 of 2015

CS(KM): 09/05/2019/4P/3C