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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)Nos. 16344 & 16345 of 2015
and M.P(MD)Nos. 1 & 2 of 2015

Chellam Mobiles
Represented by its Proprietor
Mr.C.Balasubramanian, ... Petitioner in both W.Ps

Vs.

1. The Assistant Commissioner of Commercial Taxes,
   Aruppukottai Assessment Circle,
   Virudhunagar District.

2. The Commercial Tax Officer,
   Aruppukottai Assessment Circle,
   Virudhunagar District. ... Respondents in both W.Ps

PRAYER in W.P.(MD) No.16344 of 2015 : Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus or any other Appropriate writ, order or direction in the nature of a writ, to direct the second respondent to call for the records relating to the impugned proceedings passed by the second respondent, dated 03.07.2015, against petitioner's TIN:33085804285/2014-15, quash the proceedings and direct the respondents to collect the belatedly filing monthly returns.

PRAYER in W.P.(MD) No.16345 of 2015 : Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus or any other Appropriate writ, order or direction in the nature of a writ, to direct the first respondent to call for the records relating to the impugned proceedings, passed by the first respondent in PDL;178/2015/A2, dated 10.07.2015, against petitioner's TIN:33085804285, quash the proceedings and direct the first respondent to revoke the cancellation proceedings of petitioner's TIN: 33085804285.

(In both W.Ps)
For Petitioner : Mr.K.S. Prakash
for Mr.A. Saravanan

For Respondents : Mr.M. Jeyakumar
Additional Government Pleader

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COMMON ORDER

W.P.(MD) No.16344 of 2015 has been filed challenging the impugned proceedings passed by the second respondent, dated 03.07.2015, against petitioner's TIN:33085804285/2014-15

W.P.(MD) No.16345 of 2015 has been filed challenging the impugned proceedings, passed by the first respondent in PDL;178/2015/A2, dated 10.07.2015, against petitioner's TIN:33085804285, quash the proceedings and direct the first respondent to revoke the cancellation proceedings of petitioner's TIN: 33085804285.

2. It is the case of the petitioner that, without affording sufficient opportunity to the petitioner, the first respondent cancelled the Value Added Tax registration certificate by the impugned proceedings, dated 10.07.2015, on the ground that monthly returns were not filed by the petitioner.

3. According to the petitioner, a show cause notice was received by the petitioner from the first respondent on 21.05.2015 and 13.06.2015, for cancellation of registration certificate which was replied by the petitioner undertaking to file the monthly returns regularly in the future.

4. According to the petitioner, arbitrarily, without affording sufficient opportunity, within a short period, the first respondent cancelled the registration certificate by the impugned proceedings, dated 10.07.2015. It is also the case of the petitioner that no personal hearing was afforded to the petitioner by the respondents before cancelling the registration certificate. In such circumstances, the writ petition has been filed.

5. The respondents have filed a counter affidavit before this Court, wherein, they have stated that sufficient opportunity was given to the petitioner, before cancelling the registration certificate. Further, they have stated that the petitioner has got an alternative remedy by filing the statutory appeal and without availing the same, the Writ Petitioner has directly approached this Court which according to the respondents is not maintainable.

6. Heard Mr.K.S. Prakash, learned counsel appearing for the petitionre and Mr.M. Jeyakumar, learned Additional Government Pleader appearing for the respondents.

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 :---------------"*

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As seen from Rule 19(1), notices, summons are ordered under the Tamil Nadu Value Added Tax Act will have to be effected either technically 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.*

8. It is contended by the learned counsel appearing for the petitioner that the respondents have not followed the procedure for service of notice, as contemplated under, Rule 19(1)(d) of the Tamilnadu VAT Act, 2007.

9. The learned counsel appearing for the petitioner, drew the attention of this Court to the show cause notices, dated 21.05.2015 and 13.06.2015 sent by the first respondent for cancellation of the VAT registration certificate. According to the learned counsel appearing for the petitioner, the said show cause notices were duly replied by the petitioner on 29.05.2015 and 22.06.2015, requesting the respondent to permit the petitioner to file the monthly return manually and requesting them to drop any further proceedings for cancellation of the registration certificate. According to the learned counsel for the petitioner, even without affording sufficient opportunity within few days from the date of the last reply i.e., on 22.06.2015, the first respondent has cancelled the registration certificate under the impugned proceedings, dated 10.07.2015.

10. 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)***

11. Relying upon the aforesaid judgments, the learned Counsel for the petitioner would contend that since the impugned order has been passed without service of notice on the petitioner, it has to be quashed. Further, the learned Counsel contended that no personal hearing was afforded to the petitioner, before cancellation of registration certificate by the respondents.

12. 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.*

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13.It is evident from Section 39(15) of the TNVAT Act that the

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cancellation of registration certificate shall be made by the respondents only after hearing the petitioner. In the instant case, even without affording sufficient opportunity, within few days from the date of last reply, dated 22.06.2015, the first respondent has cancelled the registration certificate under the impugned proceedings, dated 10.07.2015.

14. In such circumstances, the impugned proceedings dated, 03.07.2015 passed by the 2nd respondent in TIN No.33085804285/2014-15 and dated, 10.07.2015 in PDL:178/2015/a2, passed by the first respondent in TIN No.33085804285, are hereby quashed and the matters are remanded back to the first respondent for fresh consideration in accordance with law, who shall pass final orders after giving sufficient opportunity to the petitioner including granting them the right of personal hearing, within a period of eight (8) weeks, from the date of receipt of a copy of this order. Consequently, the attachment notice issued by the second respondent to Karur Vysya Bank Manager, Aruppukottai in Form 'U' dated 12.08.2015 is also quashed.

15. With the aforesaid direction, these Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

To

1. The Assistant Commissioner of Commercial Taxes,
   Aruppukottai Assessment Circle,
   Virudhunagar District.

2. The Commercial Tax Officer,
   Aruppukottai Assessment Circle,
   Virudhunagar District.

+2 CC to M/s.A.SARAVANAN, Advocate (SR-55791[F] dated 21/03/2019)

+1 CC to Special Government Pleader (SR-55952[F] dated 22/03/2019)

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