IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.10502 of 2013
and
M.P.No.2 of 2013

M/s.Steel House,
Rep., by its Proprietor,
Aashish Khandelwal,
No.432-3, Kali Gounder Kadu,
Kalarampatti Road, Salem-15. .. Petitioner

-vs-

The Assistant Commissioner (CT)(FAC),
Salem Town West Circle,
Salem. .. Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the impugned proceedings of the respondent in TIN: 33312823494 dated 22.02.2013, quash the same as illegal and violative of the principles of natural justice as provided under Section 39(15) of the TNVAT Act, 2006.

For Petitioner : Mr.R.Rajasekar

For Respondent : Mr.V.Veluchamy
Government Advocate

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ORDER

The order passed by the respondent, cancelling the registration certificate, in proceedings dated 22.02.2013, is under challenge in the present writ petition.

2.The petitioner is the Proprietor of M/s.Steel House. The petitioner is a dealer in iron and steel and was registered under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "the TNVAT Act").

3.The grievance of the writ petitioner is that the impugned order of cancellation of registration certificate was issued without providing opportunity as contemplated and thus, the order impugned is in violation of the principles of natural justice. The facts, at this juncture, need no further adjudication, as the petitioner has raised the ground of violation of principles of natural justice.

4.Admittedly, a notice dated 01.02.2013 was issued directing the petitioner to submit their objections within a period of 15 days.

5.The learned counsel for the petitioner contends that the said notice was received by the petitioner on 15.02.2013 and before submitting objections, the impugned order was passed in proceedings dated 22.02.2013 within a period of one week. This apart, the subsequent notice issued by the respondent, seeking explanation regarding cancellation of registration certification, was not even received by the petitioner and therefore, the petitioner could not able to submit their objections/explanation with reference to the allegations set out in the notice.

6.To substantiate the said ground, the learned counsel referred to the Circular issued by the Commissioner of Commercial Taxes dated 20.04.2010, wherein directions are issued to the competent authority that the final order shall not be passed on the last date itself fixed to reply, but only after the next day of the last date fixed. Time granted to file reply is available up to the end of the working hours of that day. If the last date fixed for filing reply happens to be a holiday, the next working day is the last date to file reply. In spite of the direction issued through the Circular dated 20.04.2001 by the Commissioner, the respondent issued the notice on 01.02.2013, which was received by the petitioner on 15.02.2013 and passed the impugned order in proceedings dated 22.02.2013. Thus, the impugned order was passed in violation of the directions issued by the Commissioner in his circular dated 20.04.2001. This apart, the subsequent notice issued, seeking explanation regarding cancellation of registration certificate, was not received by the petitioner.

7.In this regard, the counter filed by the respondent reveals that action was proposed to cancel the registration certificate under the statute and a notice was issued on 01.02.2013. The notice was returned by the postal authorities on 12.02.2013 denoting that "no such addressee". Again the notice was served by way of affixture on 14.02.2013. As the petitioner was not available in the place of business, the registration certificate was cancelled on 22.02.2013 with effect from 07.06.2010.

8.The above facts stated in the counter affidavit would clearly state that the fifteen days time to be granted to the petitioner to submit their objections was not given to the petitioner and further, the petitioner had not received the subsequent notice issued by the respondent. In view of the facts and circumstances, this Court is of the opinion that the case is to be remanded back for fresh consideration for the purpose of providing opportunity to the petitioner.

9.Accordingly, the impugned order passed by the respondent in proceedings dated 22.02.2013 is quashed and the matter is remanded back to the respondent for fresh consideration. The respondent is directed to issue a fresh show cause notice setting out all the allegations to the petitioner within a period of four weeks from date of receipt of a copy of this order, granting 15 days time for filing objections/explanations. On receipt of the notice, the petitioner shall file their explanation/objections, if any. On receipt of such explanation/objections, the respondent is directed to consider the objections, explanations, documents and evidences and pass appropriate orders on merits and in accordance with law within a period of twelve weeks therefrom.

With the above directions, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

abr

To

The Assistant Commissioner (CT)(FAC),
Salem Town West Circle,
Salem.

+1cc to Special Government Pleader(Taxes), S.R.No.32682

W.P.No.10502 of 2013

SR-II(CO)
CB(13/08/2021)