IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2021

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.NO.17610 OF 2021
AND
W.M.P.NOS.18740 & 18742 OF 2021

SM Civil Labour Contractor
Rep. by its Proprietri,
Sakthivel Gayathri
No.2/1335A,
Karpaga Vinayagar Nagar
6th Street,
Thoraipakkam
Chennai-600 115. ... Petitioner

-Vs.-

The Assistant Commissioner (Circle)
Sholinganallur (Commercial Tax Department)
Nandanam,
Chennai-600 035. .. Respondent

Prayer:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the respondent passed in Reference Number:ZA331019044693L dated 14.10.2019 and quash the same and further direct the respondent to restore/activate the registration of the petitioner.

For Petitioner : Mr.N.Murali

For Respondent : Ms.Amirta Dinakaran
Government Advocate

O R D E R

Read this in conjunction with and in continuation of earlier proceedings made in previous listing on 24.08.2021 which reads as follows:

'Mr.N.Murali, learned counsel for writ petitioner is before this Virtual Court.

2. It is submitted by learned counsel for writ petitioner that an order cancelling the registration of the writ petitioner being 'order dated 14.10.2019 bearing reference ZA3310190446931' (hereinafter 'impugned order' for the sake of brevity) has been called in question. Learned counsel submits that the matter arises under 'the Tamil Nadu Goods and Service Tax Act, 2017' ('TNGST Act' for brevity).

3. The impugned order was preceded by a 'show-cause notice dated 25.09.2019' ('SCN' for the sake of brevity). A perusal of SCN at page 1 of the typed-set of papers reveals that the matter arises under the TNGST Act.

4. Be that as it may, learned counsel for writ petitioner submits that cancellation of registration is under Section 29 of TNGST Act and vide proviso to Section 29(2) of TNGST Act, a proper officer cannot cancel the registration without giving an Assessee an opportunity of being heard. It is the specific case of the writ petitioner that he did not notice the SCN which was hosted in the portal and therefore, he did not send a reply. Interestingly and intriguingly, the impugned order reads as follows:

(2)

Reference Number: ZA3310190464693L

Date: 14/10/2019

To

SAKTHIVEL [illegible]

D.NO.2/1335A,SRI KARPAKA VINAYAKAR NAGAR,6TH MAIN ROAD,,INJAMBAKKAM,Kanchipuram,,Tamil Nadu,600115

GSTIN/ UIN :33BUIPG7190P1Z1

Application Reference No. (ARN): AA330919058425U

Dated: 25/09/2019

Order for Cancellation of Registration

This has reference to your reply dated 10/10/2019 in response to the notice to show cause dated 25/09/2019

Whereas the undersigned has examined your reply and submissions made at the time of hearing, and is of the opinion that your registration is liable to be cancelled for following reason(s).

1. The dealers have not filed any objection / reply till date. Hence RC cancelled.

The effective date of cancellation of your registration is 01/10/2019

Determination of amount payable pursuant to cancellation:

Accordingly, the amount payable by you and the computation and basis thereof is as follows:

The amounts determined as being payable above are without prejudice to any amount that may be found to be payable you on submission of final return furnished by you.

You are required to pay the following amounts on or before failing which the amount will be recovered in accordance with the provisions of the Act and rules made thereunder.

Head	Central Tax	State Tax/UT Tax	Integrated Tax	Cess
Tax	0	0	0	0
Interest	0	0	0	0
Penalty	0	0	0	0
Others	0	0	0	0
Total	0.0	0.0	0.0	0.0

Place: SHOLINGANALLUR (C)

Date :14/10/2019

S Elango

Assistant Commissioner(Circle)

SHOLINGANALLUR

5. A perusal of the impugned order reveals that in one breath it says that the dealer has not filed any objection/reply in response to the SCN and in the same breath it says that the proper Officer has examined the reply made at the time of hearing and is of the view that the registration is liable to be

cancelled for the following reasons, but no reasons have been set out. In other words, this is not a speaking order. Furthermore, a perusal of the SCN reveals that it talks about a personal hearing on 02.10.2019 at 11.00am and 2nd October is a public holiday on account of Gandhi Jayanthi.

6. Be that as it may, learned counsel for writ petitioner submits that he did not resort to revocation of the cancellation under Section 30 of TNGST Act as the time stipulated for revocation had elapsed and therefore, the writ petitioner filed an appeal under Section 107 and the appeal under Section 107 came to be disposed of vide an Memorandum dated 03.05.2021 bearing reference Rc.No.604/2021/A1 by the Appellate Authority solely on the ground of limitation without expressing any opinion or going into the merits of the matter. In the aforesaid circumstances, Ms.Amrita Dinakaran, learned Revenue counsel who accepts notice on behalf of the sole respondent requests time to get instructions and revert to this Court.

Registry to list this matter one week hence in the motion list showing the name of the Revenue counsel. List on 31.08.2021.'

2. Today, Mr.N.Murali, learned counsel on record for writ petitioner and Ms.Amirta Dinakaran, learned State counsel for sole respondent are before this Virtual Court.

3. Adverting to the aforementioned earlier proceedings made in previous listing on 24.08.2021, learned State counsel i.e., Revenue counsel submits that she has since got written instructions and on instructions, learned Revenue counsel submits that SCN dated 25.09.2019 has been issued with an inadvertent error as it is a computer generated SCN. Learned Revenue counsel goes on to say that SCN dated 25.09.2019 being a computer generated notice has inadvertently fixed personal hearing on 02.10.2019 (at 11.00 a.m.) which is a public holiday on account of Gandhi Jayanthi.

4. Respondent-Department regrets the error is learned counsel's say. Be that as it may, on instructions it is submitted by learned Revenue counsel that no personal hearing was held on 02.10.2019 or thereafter. This by itself becomes a ground to set aside the impugned order and relegate the matter back to respondent. However, owing to the admitted error in SCN, this Court deems it appropriate to set aside the same also with a directive to reissue the SCN after eliminating the error.

5. In the light of the narrative thus far, the following order is passed.

(a) The impugned order being order dated 14.10.2019 bearing reference No.ZA331019044693L is set aside.

(b) The SCN being show cause notice dated 25.09.2019 bearing reference No.ZA330919088113A is set aside.

(c) The impugned order is set aside solely on the ground that show cause notice [SCN] dated 25.09.2019 has been issued inadvertently by fixing personal hearing on a public holiday on account of Gandhi Jayanthi i.e., 02.10.2019 (at 11.00 a.m.) which error is regretted. There is no disputation or disagreement that no personal hearing was held and it is submitted that SCN is a computer generated notice which has caused error.

(d) Respondent shall issue fresh SCN calling for noticee/writ petitioner's response in accordance with law and pass orders afresh after considering the response.

(e) The above exercise shall be completed by respondent within six weeks from today i.e., on or before 12.10.2021.

(f) Though obvious, it is made clear that no opinion or view on the merits of the matter has been expressed qua impugned order or SCN in this order.

6. This Court deems it appropriate to observe and direct the respondent and the authorities above the respondent to do the needful to make necessary changes in the software to ensure that errors of the aforesaid kind (as in the case on hand) do not recur. In other words, the Department will do the needful to make changes in the software to avoid such predicaments.

7. Writ Petition is disposed of with the above directives. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mk

To

The Assistant Commissioner (Circle)
Sholinganallur (Commercial Tax Department)
Nandanam, Chennai-600 035.

+1cc to Mr.N.Murali, Advocate, S.R.No.44675
+1cc to the Special Government Pleader, S.R.No.44005

W.P.No.17610 of 2021
and
W.M.P.Nos.18740 & 18742 of 2021

AD(CO)
CS/20/09/2021