BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 15.02.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.12464 of 2015
and
MP(MD)Nos.1 & 2 of 2015

Tvl.Shifa Leathers,
Rep.by its Proprietor,
S.Rafeek Raja ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai - 600 005.

2.The Assistant Commissioner (CT)-II,
Commercial Tax Building,
Sub-Collector's Office Road,
Dindigul - 624 001. ... Respondents

Prayer : Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned proceedings of the 2nd respondent in Cancellation ID : 376817328 dated 06.07.2015 and quash the same and to consequently direct the 2nd respondent to reactivate the petitioner's VAT Registration in TIN: 33075242030.

For Petitioner : Mr.B.Rooban, Advocate

For Respondents : Mrs.J.Padmavathidevi, Special Government Pleader

ORDER

Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.

2.The petitioner is a registered dealer with the respondent. Alleging that the petitioner had falsely claimed Input Tax Credit, the second respondent issued show cause notice dated 30.06.2015. The petitioner is said to have appeared before the second respondent and offered his explanation. Be that as it may, the impugned order dated 06.07.2015 came to be passed cancelling the petitioner's registration with effect from 08.01.2014. Challenging the same, this writ petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. Per contra, the respondents have filed a detailed counter affidavit and also the typed set of papers. The learned Special Government Pleader appearing for the respondents took me through the contents setout therein and wanted me to sustain the impugned order.

4. I carefully considered the rival contentions and went through the materials on record. As rightly pointed out by the learned counsel appearing for the petitioner, for cancelling the registration of dealers, the authority must follow the procedure set out in Section 39 (14) and (15) of the Tamil Nadu Value Added Tax Act, 2006. They read as follows :

> *"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.*
>
> *(15)No application for registration of dealer 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."*

5. In the case on hand, the show cause notice does not anywhere propose to cancel the petitioner's registration. In other words, before passing the impugned order of cancellation, the respondent has not issued any show cause notice. I, therefore, no hesitation to come to the conclusion that the requirement set out in the aforesaid provision was not complied with. That apart, there cannot be any retrospective cancellation of registration as held in the decision reported in ***(1998) 109 STC 439 (State of Maharashtra Vs. Suresh Trading Company)***. This decision was followed by this Court in WP No.22890 of 2013 vide order dated 08.01.2018. It is a short order and deserves to be quoted as such. It reads as follows :

> *"2.The petitioner has impugned a communication issued by the respondent dated 04.04.2013, cancelling the petitioner's sales tax registration under the provisions of the Tamil Nadu Value Added Tax Act, 2006 [in short "the TNVAT Act"] with retrospective effect. Firstly, such retrospective cancellation is held to be*

bad in law in the decision of the Hon'ble Supreme Court of India in State of Maharashtra Vs. Suresh Trading Company, reported in (1998) 109 STC 439.

3.Apart from that there is a statutory violation of Section 39(14) of the Act, which states that the authority granting the Certificate of Registration may, by order, for good and sufficient reasons cancel, modify or amend any certificate of registration granted by it. However, before exercising such power, the dealer concerned should be given an opportunity to be heard in terms of Section 39(15) of the TNVAT Act. This mandatory/statutory requirement has not been followed. These are sufficient to hold that the impugned order of cancelling the petitioner's registration with retrospective effect is illegal.

4.For the above reasons, the impugned order is set aside and the writ petition is allowed. Consequently, connected miscellaneous petition is closed. No costs. It is open to the respondent to issue show cause notice to the petitioner and proceed further in accordance with law."

6.Since I am satisfied that the ratio laid down in the above said decision is applicable to the case on hand, the impugned order is liable to be quashed. It is accordingly quashed. I would have normally remitted the matter to the file of the concerned respondent. But then, the learned counsel for the petitioner states that the petitioner has not done any transaction after the passing of the impugned order even though the interim order was granted in the writ petition. He is only confining his relief to setting aside the impugned order insofar as it has retrospective application. However, if the second respondent wants to proceed against the petitioner in respect of any irregularity, it is always open to the respondent to do so.

7.The writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To:

1.The Commissioner of Commercial
Taxes,
O/o.The Principal and Special
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai - 600 005.

2.The Assistant Commissioner (CT)-II,
Commercial Tax Building,
Sub-Collector's Office Road,
Dindigul - 624 001.

+1 CC to M/s.SPL GP (SR-5344[F] dated 16/02/2021)

+1 CC to M/s.B.ROOBAN, Advocate (SR-5475[F] dated 16/02/2021)

WP(MD)No.12464 of 2015
and
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15.02.2021

SKM
TK/SAR/27.02.2021/4P/5C