(2011) 09 MAD CK 0315

In the Madras High Court

Case No : Writ Petition No. 20852 of 2011 and M.P. No. 1 of 2011

Indo Germa Products Limited APPELLANT

Vs

Assistant Commissioner (CT) RESPONDENT

Date of Decision : 19-09-2011

Acts Referred:

Tamil Nadu Value Added Tax Act, 2006 — Section 39, 71, 71(3)(e), 72, 72(b)

Citation : (2011) 45 VST 236

Hon'ble Judges : K. Suguna, J

Bench : Single Bench

Advocate : C. Baktha Siromoni, for the Appellant; R. Sivaraman, Special Government Pleader assisted by Kanmani Annamalai, Government Advocate Taxes, for the Respondent

Final Decision : Dismissed

Judgement

K. Suguna, J.—This writ petition is filed challenging the order dated March 31, 2011 passed by the respondent herein by which the petitioner''s registration certificate has been cancelled. The case of the petitioner is that he is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 ("the Act", for short) and also under the Central Sales Tax Act, 1956; he is a dealer manufacturing rolling shutter parts, iron gates and grills and selling the same, both locally and also outside the State; however, he had not filed the returns from March, 2010 and based on the non-filing of returns, a notice was served on him by proceedings dated February 25, 2011 directing him to show cause as to why his registration certificate should not be cancelled; but, he had not submitted his reply to the show-cause notice; subsequently, the impugned order cancelling his registration certificate was passed.

2. Initially, a stand was taken by the learned counsel for the petitioner that no notice was issued to the petitioner. But, by producing the relevant file in the last hearing, the learned Special Government Pleader is able to establish that a notice dated February 25, 2011 was served on the petitioner. The said notice is also

referred to in the "reference" column of the impugned order dated March 31, 2011 also. Consequently, I am not able to accept this stand of the learned counsel for the petitioner.

3. The other stand taken by the learned counsel for the petitioner is that as far as cancellation of registration certificate is concerned, it is a capital punishment and registration certificate cannot be cancelled for non-filing of returns. In support of this contention, the learned counsel for the petitioner has relied on section 71 (3)(e), section 72(b) and also sub-sections (14) and (15) of section 39 of the Act, 2006, i.e., according to him, as per section 71 of the Act, criminal action can be initiated for non-filing of returns and also fine may be collected; apart from this, as per section 72 of the Act, compounding fee also can be imposed; but, the question of imposing punishment of cancellation of registration for non-filing of returns does not arise.

4. In reply to the above stand of the learned counsel for the petitioner, the stand of the learned Special Government Pleader is that under subsections (14) and (15) of section 39 of the Act which reads as follows:

(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 or for a copy or duplicate of the certificate under this section shall be refused and no order under subsection (14) shall be made, unless the dealer concerned has been given an opportunity of being heard.

For any good reason, registration can be cancelled and according to him, the authority having the power to issue certificate of registration, has got the power to cancel the same.

5. I am inclined to accept this stand of the learned Special Government Pleader since the wordings used in the said section are "the authority granting the certificate of registration may, any order, for good and sufficient reasons to cancel, modify or amend any certificate of registration granted by it". As per this, the authority who has got the power to issue the certificate of registration has also got the power to cancel or modify or amend the certificate of registration. When the wordings in sub-section (14) of section 39 of the Act are very clear to that effect, the argument of the learned counsel for the petitioner cannot be accepted.

6. The other stand of the learned counsel for the petitioner is that as per sub-sections (14) and (15) of section 39 of the Act, an opportunity of being heard should be given, but, no such an opportunity of being heard was given to the petitioner.

7. But, according to the learned Special Government Pleader, under subsections (14) and (15) of section 39 of the Act, an opportunity has to be given and in the case of the petitioner, already, a show-cause notice dated February 25, 2011 had

been issued; since the petitioner had not responded to the said show-cause notice, the impugned order had been passed. Besides, it is the specific stand of the learned Special Government Pleader that since show-cause notice had been issued to the petitioner directing him to show cause as to why his registration certificate should not be cancelled, the petitioner has to make his submission with regard to the proposed cancellation of registration certificate and the question of again providing an opportunity of being heard does not arise.

8. I am not able to accept this stand of the learned Special Government Pleader for the reason that even as per paragraph No. 35 of the judgment of the honourable apex court reported in Meera Sahni Vs. Lt. Governor of Delhi and Others, when the Act prescribes a method or mode to issue an order, that has to be followed while passing that order. It is an admitted fact that a show-cause notice was issued to the petitioner. But, under sub-section (15) of section 39 of the Act, what is contemplated is a personal hearing. Personal hearing is totally different from show-cause notice. Consequently, though the Department has issued a show-cause notice, that will not amount to granting an opportunity of being heard. Consequently, it has to be held that before passing the impugned order, the condition imposed under sub-section (15) of section 39 of the Act has not been complied with. Hence, on the ground that the condition imposed under sub-section (15) of section 39 of the Act has not been complied with, the impugned order is set aside and the matter is remitted back to the Assistant Commissioner, the respondent herein, who has passed the impugned order.

9. However, it is an admitted fact that for the show-cause notice also, the petitioner had not at all responded and he had not even filed his returns also, that too, from March, 2010. But, the learned counsel for the petitioner has submitted that the petitioner is willing to file his returns and comply with other formalities also. In view of this submission made by the learned counsel for the petitioner, within a period of ten days from the date of receipt of a copy of this order, the petitioner is at liberty to file his returns from March, 2010 and thereafter, within a period of four weeks, the respondent is directed to pass orders following the procedure contemplated under the relevant Act and Rules.

10. However, in spite of the show-cause notice issued to the petitioner, the petitioner had not responded and besides, a stand has been taken by the petitioner that no opportunity was given to him which is also a false stand even as per the documents enclosed in the typed set of papers. Hence, the petitioner is directed to pay costs of Rs. 2,000 to the Chief Justice Relief Fund within a period of one week. In the event of the petitioner''s failure to pay costs within the stipulated time, the respondent need not re-do the exercise and the respondent is at liberty to proceed further based on the impugned order dated March 31, 2011. With the above direction, this writ petition in disposed of. No costs. Consequently, connected miscellaneous petition is closed.