(2007) 06 MAD CK 0186

In the Madras High Court

Case No : Writ Petition No. 18778 of 2007 and M.P. No. 1 of 2007

Sri Selva Ganesh Traders APPELLANT

Vs

Commercial Tax Officer RESPONDENT

Date of Decision : 13-06-2007

Acts Referred:
Tamil Nadu Value Added Tax Act, 2006 — Section 39, 39(14), 39(15), 39(4), 39(5)

Citation : (2007) 9 VST 411

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : S. Ramanathan, for the Appellant; J. Ganesan, Government Advocate, for the Respondent

Judgement

S. Manikumar, J.—The petitioner has filed the present writ petition challenging the order of the respondent in proceedings No. TIN 33952282949/2006-07 dated April 27, 2007 cancelling the registration certificate of the petitioner issued under the Tamil Nadu Value Added Tax Act, 2006.

2. The averments in the affidavit filed in support of the petition are as follows:

The petitioner is a registered dealer in oil seeds, oil cake, etc. He was running the business from March 15, 2006 and the goods dealt with by the petitioner are exempted from tax. The respondent issued a notice in TIN No. 33952282949/2007-08, dated April, 19, 2007 stating that the petitioner had purchased gingelly seeds from Regulated Market Committee, Ariyalur, during the year 2006-07, but he did not file any return or paid any tax. Therefore, the respondent determined the turnover of the petitioner''s firm provisionally at Rs. 5 lakhs with a tax liability of Rs. 20,000 and fixed the additional security at Rs. 30,000 as per Section 39(4) of the Tamil Nadu VAT Act, 2006. The petitioner was required to pay the additional security within three days failing which the registration certificate under the TN VAT Act, 2006 and CST Act, 1956 will be cancelled. The petitioner by his letter dated April 26, 2007, replied that he did not purchase anything from the Regulated Market Committee, Ariyalur, and requested 15 days time for filing objections. Without considering the request made by the petitioner and giving proper and reasonable opportunity, the respondent has cancelled the registration certificate of the petitioner issued under the Tamil Nadu VAT Act and CST Act by his proceedings in TIN No. 33952282949/2006-07 dated April 27, 2007, stating that the objections are overruled. No opportunity of being heard was given as contemplated u/s 39(5) of the TN VAT, Act. Further, the additional security demanded by the respondent is not in accordance with the provisions of Section 39(5) of the TN VAT Act.

3. Learned Counsel appearing for the petitioner referring to Section 39(4) and (5) of the Tamil Nadu VAT Act, 2006, submitted that the petitioner was not given an opportunity of being heard before directing him to pay an additional security for a sum of Rs. 30,000 u/s 39 of the Act. He further submitted that as per Section 39(5) of the Act, an additional security, shall not exceed one half of the tax payable. Learned Counsel also submitted that before cancelling the registration the assessee should be given an opportunity of being heard. Therefore, the impugned order is liable to be set aside on the grounds of violation of natural justice and levy of excess tax which is not permissible under the statute.

4. I have heard Mr. Ramanathan, learned Counsel appearing for the petitioner and Mr. J. Ganesan for the State and perused the materials on record.

5. Before adverting to the facts of the case, the relevant portion, namely, Section 39(4), (5), (14) and (15) of the Tamil Nadu VAT Act, 2006 is extracted hereunder:

(4) Where it appears necessary to the authority granting a certificate of registration under this section so to do for the proper realisation of the tax payable under this Act it may, at any time, while such certificate is in force, by an order in writing and for reasons to be recorded therein, require the dealer to whom the certificate has been granted, to furnish within such time as may be specified in the order and in the prescribed manner such security or, if the dealer has already furnished any security in pursuance of an order under this sub-section such additional security, as may be specified in the order for the aforesaid purpose.

(5) No dealer shall be required to furnish any security or additional security under Sub-section (4) by the authority referred to therein, unless he has been given an opportunity of being heard. The amount of security which a dealer may be required to furnish under Sub-section (4) or the aggregate of the amount of such security and the amount of additional security which he may be required to furnish under Sub-section (4) by the authority referred to therein, shall not exceed one half of the tax payable, in accordance with the estimate of such authority, on the turnover of such dealer for the year in which such security or, as the case may be, additional security is required to be furnished.

(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 Sub-section (14) shall be made, unless the dealer concerned has been given an opportunity of being heard.

6. On receipt of the notice dated April 19, 2007, the petitioner has requested the respondent to grant 15 days time to prove that he has not purchased gingelly oil seeds from the Regulated Market Committee, Ariyalur. Though his request for time has been acknowledged by the respondent, he refused to grant time and proceeded to cancel the licence issued under the Tamil Nadu VAT Act, 2006 on the ground that the petitioner did not deny the purchase of gingelly oil seeds from the Regulated Market Committee, Ariyalur, and he failed to pay the tax or file returns. For the abovesaid reasons, the respondent has cancelled the registration certificate issued under the Tamil Nadu VAT Act, 2006 and Central sales tax registration certificate of the petitioner with effect from April 1, 2007.

7. A reading of the provisions of the Tamil Nadu Value Added Tax Act, 2006 confirms that the assessee should be heard before fixing the amount of additional security-that he must be given an opportunity of being heard. The principles embedded in the statute have not been followed by the respondent before cancelling the licence or registration issued by the competent authority. Apparently, the respondent has failed to adhere the statutory provisions and cancelled the licence. Therefore, the impugned order is liable to be set aside and accordingly set aside. The matter is remanded back to the respondent for fresh consideration on merits. The petitioner shall be given 15 days time to submit his objections to prove his case and on receipt of the objections, personal hearing as contemplated u/s 39(5), (14) and (15) of the Act shall be given to the petitioner and thereafter the respondent shall pass appropriate orders within a period of 15 days in accordance with law.

8. With the above direction, the writ petition is disposed of. Consequently, M.P. No. 1 of 2007 is closed. No costs.

