**(2010) 03 MAD CK 0221**

**In the Madras High Court**

**Case No :** Writ Petition No. 5094 of 2010 and M.P. No. of 2010

Yash Power Tools APPELLANT

Vs

Assistant Commissioner (CT), Harbour II RESPONDENT

**Date of Decision :** 25-03-2010

**Acts Referred:**

**Citation :** (2010) 35 VST 64

**Hon'ble Judges :** Chitra Venkataraman, J

**Bench :** Single Bench

**Advocate :** R. Kumar, for the Appellant; R. Tholkappian, Government Advocate (Taxes), for the Respondent

**Final Decision :** Allowed

## Judgement

Chitra Venkataraman, J.—The Petitioner has challenged the proceedings of the Respondent dated October 12, 2009 cancelling the registration under the Value Added Tax Act on the ground that the Petitioner had not filed the returns in the place of business and on physical verification, it was found closed.

2. The order passed by the Assistant Commissioner (CT) was addressed to the Petitioner''s residential address. It is not denied by the Respondent that the Petitioner is the proprietor of the business and his business place is at 297/144, Lingi Chetty Street, Chennai 1. It is seen from the notice served on the Petitioner by the Assistant Commissioner dated September 30, 2009 that the said notice was addressed to Tvl. Yash Power Tools, 297/144, Lingi Chetty Street, Chennai 1 and there is an endorsement, which is as follows:

3. Surprisingly, to the very same address, the Joint Commissioner has also sent a notice dated March 12, 2010 directing the Petitioner to obtain new registration certificate from the respective assessment circle.

4. It is seen from the records that the Petitioner had not filed the returns for the period April, 2009 to July, 2009 within the due date. Admittedly, the same were filed in the month of September, 2009. When the authority has jurisdiction to

ignore such returns filed and proceed against the Petitioner in respect of non-filing the returns, while taking recourse to the cancellation of registration, provisions of law require that there must be a proper initiation of the proceedings before a cancellation order was passed by giving a notice to the Petitioner to show cause as to why registration should not be cancelled. As already pointed out the notice dated September 30, 2009 was addressed to the Petitioner''s business address. The contention of the Respondent that as the business premises was closed, there was only an affixture of notice is belied by the fact that the proceedings dated March 12, 2010 addressed to the business place were served on the Petitioner. Admittedly, no enquiry was made as to whether the Petitioner has closed down the business in the said address before resorting to affixture of the notice dated September 30, 2009.

5. In the circumstances, any order passed without proper service as per the provisions of the Act vitiates the entire proceedings. In the face of the fact that the Petitioner is very much available in the same address, the proceedings passed without affording proper opportunity is liable to be set aside. Hence, I have no hesitation in setting aside the order passed by the Respondent. It may be seen that the Petitioner had filed a return for the months of April, 2009 to July 2009, in the month of September, 2009.

6. Having regard to the said fact, the Respondent is hereby directed to take such proceeding as are available as regards the belated return in accordance with law. In the absence of proper service, I do not find any justification to uphold the order passed by the Respondent cancelling the registration. Accordingly, the impugned order stands set aside. The writ petition is allowed. No costs. Consequently, M. P. No. 1 of 2010 is closed.