IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2018

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.8449 of 2018
and
WMP.Nos.10394 & 10395 of 2018

Jai Laxmi Venkatesh Granites Private Limited
Represented by its Accountant
SF No.869 & 876, Guttur Village,
Amballi Post, Bargur Union
Krishnagiri, Tamil Nadu-635 104.
.. Petitioner

Vs.

1.The Assistant Commissioner of Commercial Taxes (SGST)
Tamil Nadu State Commercial Taxes Department
No.2/1/72, Bangalore Road,
Opp. Old Housing Board, Near Central Theatre,
Krishnagiri - 635 001.

2.Goods and Services Tax Network
Represented by its Chairman
4th Floor, East Wing, Worldmark 1, Aerocity,
Indira Gandhi International Airport,
New Delhi - 110 037.

3.State of Tamil nadu
Represented by the Commissioner of Commercial Taxes,
Ezhilagam, Kamarajar Promenade, PWD Estate,
Chepauk, Chennai, Tamil Nadu - 600 005.

4.Union of India
Through its Department of Revenue
North Block, New Delhi - 110 001. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records and quashing the impugned communication of the second respondent dated 09.02.2018 as arbitrary, illegal and without jurisdiction, and to direct the first and second respondents herein to permanently register the petitioner under the Central Goods and Services Tax Act, 2017 and the Tamil Nadu Goods and Services Act, 2017.

For Petitioner: Mr.Mohammed Shaffiq
For Respondents: Ms.G.Dhana Madhri
Government Advocate (Tax), for R1 & R3
Mr.V.Sundareswaran
Senior Panel Counsel, for R2 & R4

O R D E R

This writ petition has been filed to call for the records and quash the impugned communication of the second respondent dated 09.02.2018 and to direct the first and second respondents herein to permanently register the petitioner under the Central Goods and Services Tax Act, 2017 and the Tamil Nadu Goods and Services Act, 2017.

2. The petitioner claims to be a manufacturer and reseller of granites and tiles and a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 and Central Sales Tax Act, 1956 bearing TIN Nos.33763306452 and 1115379 respectively. After introduction of the Central Goods & Services Tax Act, 2017 and the Tamil Nadu Goods and Services Tax Act 2017, the dealers who got already registered under earlier enactments have to get migrated to CGST by following transitional provisions made under the CGST Act, 2017. However, when the petitioner attempted to migrate themselves, they were informed through the impugned communication that the functionality of migration through FORM GST REG-26 has been closed and thus, the petitioner has to apply for new registration under the provisions of GST Act. Therefore, the present writ petition was filed and entertained by this Court on 10.04.2018, also by granting an interim order that no action shall be initiated against the petitioner, by treating them as an unregistered dealer. Thereafter, the matter was adjourned on several occasions and finally posted today for further hearing.

3. The learned Government Advocate (Tax) for the respondents 1 and 3 produced a copy of the communication dated 31.07.2018 issued by the Assistant Commissioner (ST), Krishnagiri to the Joint Commissioner (Legal), Chennai, informing that revoking the registration may not be possible as the registration was cancelled by the GSTN Network. However, it is stated in the said communication that the tax payers like the petitioner herein may approach the jurisdictional Central Tax / State Tax Nodal Officers with necessary details on or before 31st August 2018, for enabling their completion of migration work. Thus, the learned Government Advocate (Tax) for the respondents 1 and 3 submitted that it is not as though the petitioner is remedy less, as they can very well approach the concerned Nodal Officer with necessary details and application. She further contended that as and when any such application is filed, the same will be considered by the said Nodal Officer, provided, such application is filed on or before 31.08.2018.

4. The learned counsel for the petitioner submitted that such application will be filed with necessary details before the concerned Nodal Officer, by tomorrow (i.e. 08.08.2018) itself. He further prayed that such Nodal Officer may be directed to consider such application and pass appropriate orders without loss of further time.

5. Heard both sides.

6. There is no dispute to the fact that the petitioner is a registered dealer previously under the Tamil Nadu Value Added Tax Act, 2006 and Central Sales Tax Act, 1956. However, after introduction of GST and during the process of migration into CGST, it appears that some mistake or short fall of information has crept in and that the petitioner did not make any efforts to rectify the same during the process of on-line migration. However, now, as it is stated by the respondents 1 and 3 that such lapse on the part of the petitioner will also be considered by the concerned Nodal Officer, it is for the petitioner to utilise such opportunity and file such application with necessary details without loss of further time. Hence, this writ petition is disposed of, in the following terms:

(a) The petitioner is directed to make an application with necessary details before the concerned Nodal Officer on or before 10.08.2018.

(b) On receipt of such application with necessary details, such Nodal Officer shall pass appropriate orders within a period of three weeks, thereafter.

(c) Since this Court has granted interim protection to the petitioner during the pendency of the writ petition not to treat them as an unregistered dealer, such protection will continue till an order is passed by the Nodal Officer.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

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Through its Department of Revenue
North Block, New Delhi - 110 001.

+1cc to Mr.V.Sundareswaran, Advocate SR.No.54318
+1cc to Mr.Mohammed Shaffiq, Advocate Sr.No.54317
+1cc to Special Government Pleader SR.No.54479

sm:9.8.2018

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