IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2018

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THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.26325 of 2018

K.Jayakumar .. Petitioner

Vs.

1. Chairman,
The Goods and Service Tax Network,
East Wing, 4th Floor, World Max-1,
Aerocity, New Delhi-110 037.

2. The Additional Director General,
National Academic of Customs,
Indirect Taxes and Narcotics,
Nacin Complex, Sector 29,
Fariadabad-121 008.

3. The Joint Commissioner (ST),
Commercial Taxes Building,
Dr.Balasundaran Road,
Coimbatore-641 018. .. Respondents

* * *

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the first respondent to permit the petitioner to take the examination by releasing the Portal of the second respondent to enable the petitioner to apply for the GST Practitioner Examination before 10.10.2018 as the examination is to be held on 31.10.2018.

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For Petitioner : Mr.C.Baktha Siromoni
For Respondents: A.P.Srinivas
Senior Standing Counsel for RR 1 & 2

Mr.M.Hariharan
Additional Government Pleader for R3

O R D E R

The prayer of the petitioner is to direct the first respondent to release the Portal of the second respondent before 10.10.2018 enabling him to apply for the GST Practitioner

Examination and to take the examination to be held on 31.10.2018.

2. The examination itself was conducted on 31.10.2018 and accordingly, the prayer sought for in this writ petition has been rendered infructuous.

3. However, learned counsel for the petitioner sought to argue that the petitioner is a Sales Tax Practitioner from 1999 and naturally, after the Tamil Nadu Value Added Tax Act coming into force, he has been practicing under the VAT as well and now he, being a Commerce graduate, has obtained Enrolment certificate for Goods and Service Tax Practitioner on 08.07.2017. However, the Central Government vide notification No.26/2018, dated 13.06.2018 and the State Government vide G.O.Ms.No.66, dated 30.06.2018 included two more categories allowing the Sales Tax Practitioners (STP) as well as Tax Returns Preparers (TRP) under existing law for the period not less than five years to be the Goods Service Tax Practitioners. Since the petitioner is having 19 years of practice, he is aggrieved by the conduct of the respondents in introducing such category only in the year 2018. However, since he falls under STP category, he would like to write the examination under the said category. But he could not apply for the examination under the STP category, as he has already enrolled himself under the Commerce degree holder category, which alone was in existence at that time. Hence, he sought for a direction from this Court permitting him to write the examination to be conducted in future by the second respondent under STP category.

4. A counter affidavit has been filed by the second respondent stating that the petitioner has got enrolled under the B.Com., graduate category and the examination conducted on 31.10.2018 is meant for STP Category only. It is also stated that when the examination for the B.Com., degree holders category is notified, the petitioner can apply and appear for the same.

5. Mr.A.P.Srinivas, learned Senior Standing Counsel appearing on behalf of respondents 1 and 2 submitted that the petitioner has already been got enrolled himself as GST Practitioner under the B.Com., Graduate category and he need not take up the examination conducted on 31.10.2018 under the STP category.

6. Heard the submissions of the learned counsel on either side and perused the materials available on record.

7. Apropos the claim of the petitioner, Rule 83 of the Central Goods and Service Tax Rules, 2017 (in short, "GST Rules") assumes relevance and the relevant portion of the same

is extracted hereunder:

"Rule 83 : Provisions relating to a goods and services tax practitioner

(1) An application in FORM GST PCT-01 may be made electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner for enrolment as goods and services tax practitioner by any person who,-

(i) to (iv) ......

- and satisfies any of the following conditions: -

(a) that he is a retired officer of the Commercial Tax Department of any State Government or of the Central Board of Excise and Customs, Department of Revenue, Government of India, who, during his service under the Government, had worked in a post not lower in rank than that of a class-II gazetted officer for a period of not less than two years; or

(b) that he has been enrolled as a tax practitioner under the existing law for a period of not less than five years;

(c) he has passed:

(i) a graduate or postgraduate degree or its equivalent examination having a degree in Commerce, Law, Banking including Higher Auditing, or Business Administration or Business Management from any Indian University established by any law for the time being in force; or

(ii) to (iv) .....

(2) On receipt of the application referred to in sub-rule (1), the officer authorised in this behalf shall, after making such enquiry as he considers necessary, either enrol the applicant as a goods and services tax practitioner and issue a certificate to that effect in FORM GST PCT-02 or reject his application where it is found that the applicant is not qualified to The Central Goods & Services Tax Rules, 2017 be enrolled as a goods and services tax practitioner.

(3) The enrolment made under sub-rule (2) shall be valid until it is cancelled:

Provided that no person enrolled as a goods and services tax practitioner shall be eligible to remain enrolled unless he passes such examination conducted at such periods and by such authority as may be notified by the Commissioner on the recommendations of the Council:

Provided further that no person to whom the provisions of clause (b) of sub-rule (1) apply shall be eligible to remain enrolled unless he passes the said examination within a period of eighteen months from the appointed date."

8. Though Sub-rule (1)(b) of Rule 83 provides for application by a Tax Practitioner of not less than five years and Sub-rule (2) provides for enrolling them as GST Practitioners, the first proviso to Rule 83(3) says that no person enrolled as GST Practitioner shall be eligible to remain enrolled, unless he passes such examination conducted at such periods and by such authority as may be notified by the Commissioner on the recommendations of the Council, while the second proviso says that no person to whom the provisions of clause (b) of sub-rule (1) apply shall be eligible to remain enrolled unless he passes the said examination within a period of eighteen months from the appointed date.

9. A reading of the first proviso to Rule 83(3) creates doubt in the mind of the petitioner that he can be eligible to remain in the roll only if he passes the said examination. According to the petitioner, every GST Practitioner, though in the rolls, shall be eligible to remain enrolled, only if they pass the examination conducted by the concerned authority notified by the Commissioner on the recommendations of the Council. Though the learned Senior Standing Counsel for the respondents 1 and 2 contended that the perception of the petitioner is misconceived, the learned counsel for the petitioner says that the perception of the petitioner cannot be ill-founded, as a cursory perusal of Rule 83 would substantiate the doubt of the petitioner. At the same time, the petitioner cannot claim to give effect to the Government Orders retrospectively, which were issued only on 13.06.2018 and it will apply only prospectively.

10. It is to be stated that the second respondent is only an authority notified in terms of first proviso to Rule 83(3) to conduct the examination at regular intervals. The second respondent has no say in respect of the eligibility of the continuance of enrollment of the GST Practitioners who got enrolled for the present, unless they pass the examination. Even the second respondent in the counter affidavit has stated that the issue of shifting the eligibility criteria of enrollment from Rule 83(1)(c)(i), i.e., Commerce Graduate to Rule 83(1)(b), i.e., STP Category does not fall within its purview.

11. In such circumstances, it is made clear that if the Commerce Graduates or the Post Graduates, who have been practicing as Service Tax Practitioners or Tax Return Preparers for more than five years, are required to write the examination, they shall be given an option to write the examination under the

said category or under the STP or TRP category, which find place at Sl.No.11 and Sl.No.12 of the category list.

12. Since the petitioner also falls under one of the said categories, of which, one was brought into effect later, as directed above, he should also be given an option to write the examination under anyone of the categories to get himself qualified to continue to remain in the rolls.

13. With the above directions, this writ petition is disposed of. However, there will be no order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman,
The Goods and Service Tax Network,
East Wing, 4th Floor, World Max-1,
Aerocity, New Delhi-110 037.

2. The Additional Director General,
National Academic of Customs,
Indirect Taxes and Narcotics,
Nacin Complex, Sector 29,
Fariadabad-121 008.

3. The Joint Commissioner (ST),
Commercial Taxes Building,
Dr.Balasundaran Road,
Coimbatore-641 018.

+1cc to A.P.Srinivas, Advocate sr.no.87783
+1cc to Special Government Pleader(Taxes) sr.no.88557

W.P.No.26325 of 2018

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