IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.24069 of 2021

(Through Video Conferencing)

M/s. S.519. N.Ramanadhapuram Primary
Agricultural Co-operative Credit Society,
Represented by its Secretary-Mr.Selvaraj Subrayanudiyar,
No.5/71, Ramanadhapuram Pudur,
Ramanadhapuram Post,
Namakkal – 637 409. ... Petitioner

Vs

1. The Central Board of Indirect Taxes,
   Represented by its Chairman,
   Department of Revenue,
   Ministry of Finance, Government of India,
   North Block, New Delhi.

2. The Superintendent,
   Rasipuram,
   Namakkal Range. ... Respondents

Prayer Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents herein to permit the petitioner to apply for revocation of cancellation of registration either at common portal or manually for GSTIN No.33AAEFN3756CIZL without any hindrance and the same shall be considered in accordance with law.

For Petitioner : Mr.S.Rajesh

For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

The petitioner has filed this writ petition for a mandamus to direct the respondents herein to permit he petitioner to apply for revocation of cancellation of GST registration of the petitioner.

2. It is the case of the petitioner, that the petitioner had obtained GST Registration after GST was implemented with effect from 01.07.2017. However, the petitioner was unable to comply with the requirements of the Act and the rules made thereunder and therefore a notice under Section 30 of the TNGST Act was issued in Form GST-REG-17 read with Rule 22 (1) of the GST Rules, 2017 on 24.08.2019. The notice called upon the petitioner to appear before the respondents on 26.08.2019.

3. It is further case of the petitioner that the petitioner had also submitted a reply on 05.09.2019 and appeared before the respondents. The respondents thereafter cancelled the registration by an order dated 24.09.2019.

4. The learned counsel for the petitioner submits that taking note on the plight of the registrants under the TNGST Act, the Ministry of Finance (Department of Revenue), the Central Board of Indirect Taxes and Customs by its order No.01/2020-Central Tax dated 25.06.2020 framed Central Goods and Services Tax (Removal of Difficulties) order, 2020, wherein, the time for filing appropriate application for revocation of cancellation of registration was extended to 31st August 2020.

5. The learned counsel for the petitioner has drawn attention to the following paragraph from the preamble to the aforesaid order which reads as under:-

> "AND WHEREAS, a large number of registrations have been cancelled under sub-section (2) of Section 29 of the said Act by the proper officer by serving notices as per clause (c) and clause (d) of sub-Section (1) of Section 169 of the said Act and the period of thirty days provided for application for revocation of cancellation order in sub-section (1) of Section 30 of the said Act, the period for filing appeal under Section (1) of Section 107 of the said Act and also the period of condoning the delay provided in sub-section (4) of Section 107 of the said Act has elapsed; the registered persons whose registration have been cancelled under clause (b) or clause (c) of sub-section (2) of Section 29 of the said Act are unable to get their cancellation of registration revoked despite having fulfilled all the requirements for revocation of cancellation of registration; the said Act being a new Act, these tax payers could not apply for revocation of cancellation within the specified time period of thirty days from the date of service of the cancellation order, as a result whereof certain

difficulties have arisen in giving effects to the provisions of sub-section (1) of Section 30 of the said Act"

6. The learned counsel for the petitioner further submits that the time extended by an order No.1/2020-Central Tax dated 25.06.2020 by the Government of India, the Ministry of Finance (Department of Revenue), the Central Board of Indirect Taxes and Customs was further extended by notification No.34/2021-Central Tax dated 29th August 2021, it is submitted by the last mentioned notification, the time was extended up to 30.09.2021. Under these circumstances, the petitioner made an attempt to file an application for revocation of cancellation of the Registration in terms of Section 30 read with the two mentioned orders in the notifications. However, the petitioner has received a response in the website of the respondents which reads as under:-

> "Application for Revocation of Cancelled Registration' cannot be filed after 579 days from date of Cancellation order"

7. The learned counsel for the petitioner submits that the very purpose of issuing the two notifications is for the ease of doing business to dealers/registrants who were unable to file returns and the goods registered was cancelled and who could not file an application for revocation of cancellation of the registration or file an appeal and therefore, writ petition deserves to be allowed.

8. The learned counsel for the petitioner has also referred to an order of this Court rendered in W.P.Nos.20083 and 20086 of 2021 dated 22.09.2021 wherein, this Court in the case of Tvl.Sunpenta Mining Service Private Limited, Salem Vs. The Assistant Commissioner (ST), Salem and another, ordered as follows:-

> "10. Now, that the writ petitioner has time till 30.09.2021 to apply for revocation of cancellation of registration under Section 30 of TN Goods ST Act it is only fair and appropriate (owing to the facts and circumstances of the case on hand) that the writ petitioner is given an opportunity to apply for revocation taking advantage of extension time frame that has been given to writ petitioner and similarly placed persons by the Central Government. The fact that the Appellate Authority has disposed of/dismissed the appeal solely on the ground of limitation makes the task easier as no opinion on

merits qua first impugned order i.e., cancellation of registration has been made by the Appellate Authority.

11. In the light of the narrative thus far, the following order is passed:

(a) The second impugned order i.e., order made by the second respondent in Appeal No.102 of 2021 being order dated 22.07.2021 is set aside solely to facilitate the writ petitioner to apply for revocation under Section 30 of TN Goods and ST Act;

(b) As the order of the Appellate Authority i.e., second respondent is set aside solely to facilitate the writ petitioner to get the advantage of extended time frame seeking revocation, it is made clear (though obvious) that no view or opinion on merits of the matter has been expressed qua second impugned order;

(c) It is open to the writ petitioner to apply for revocation under Section 30 of TN Goods and ST Act on or before 30.09.2021 and if the writ petitioner chooses to do so, a proper officer shall consider the revocation application on its own merits and in accordance with law and make an order as expeditiously as possible;

(d) For the purpose of abundant clarity, it is made clear that there is no expression of opinion regarding second registration obtained by the writ petitioner and that is also left open to the proper officer to decide in the course of taking a call on the application for revocation when made;

12. Captioned two main Writ Petitions are disposed of by this Common Order with the above directives. Consequently, connected WMPs are disposed of as closed.

13. WMP.No.21350 of 2021 has been filed to dispense with the production of original first impugned order. As the writ petitioner has filed a photo copy of the second impugned order, owing to reasons set out in supporting affidavit this WMP is ordered as prayed for. There shall be no order as to costs.”

9. Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the first respondent.

10. The facts on record indicate that the petitioner was issued with a Show Cause Notice dated 24.08.2021 under Section 29 2(b) of the Central Goods and Services Tax Act, 2017. The petitioner was also directed to appear before the Superintendent on 26.08.2019. However, the petitioner failed to respond to the same and under these circumstances, an order of cancellation came to be passed under Section 29 of the aforesaid Act on 24.08.2019.

11. As per Section 30(1) of the Central Goods and Services Tax Act, 2017 the petitioner has an option to approach the Authorities concerned for Revocation of Cancelled Registration within a period of thirty days, however, the petitioner failed to excise such option as the 30th day would have expired on 24.10.2019.

12. The alternate remedy available to the petitioner to file an appeal before the Appellate Commissioner under Section 107 of the Central Goods and Services Tax Act, 2017 within a period of three months from the date of communication of the order dated 24.09.2019 and within another thirty days after condoning the delay properly explaining the reasons of delay had also expired.

13. It is noticed that the Central Board of Indirect Taxes and Customs itself considered the plight of a persons like petitioners and has issued a clarification/Order No.01/2020-Central Tax dated 25.06.2020. The relevant portion of the said order reads as under:

> "1. Short tilte. - This order may be called the Central Goods and Services Tax (Removal of Difficulties) Order, 2020.
>
> 2. For the removal of difficulties, it is hereby clarified that for the purpose of calculating the period of thirty days for filing application for revocation of cancellation of registration under sub-section(1) of Section 30 of the Act for those registered persons who were served notice under Clause (b) or Clause (c) of sub-section (2) of Section 29 in the manner as provided in Clause (c) or clause (d) of sub-section (1) of Section 169 and where cancellation order was passed up to 12th June 2020, the later of the following dates shall be considered:-

a) Date of service of the said cancellation order; or
b) 31st day of August, 2020."

14. As a matter of fact, a Circular dated 20.07.2021 bearing reference in Circular No.157/13/2021-GST has also been issued wherein clarified the position. Paragraph 4(c) of the said Circular reads as under:

> ''4 (c) Appeals by taxpayers/tax authorities against any quasi-judicial order:
>
> Wherever any appeal is required to filed before Joint / Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where a proceeding for revision or rectification of any order is required to be undertaken, the time line for the same would stand extended as per the Hon'ble Supreme Court's order.''

15. Thus, the time for approaching the respondent stood extended up to 31.08.2020 by which time the country was under the spell of Covid-19 and lock down. Meanwhile, the Hon'ble Supreme Court has also passed a suo motu Writ Petition (Civil) No.3 of 2020 on 08.03.2021 and extending the limitation. Since there was a second wave of the pandemic, the Central Board of Indirect Taxes and Customs issued the Notification No.34/2021 – Central Tax dated 29.08.2021 in partial modification of the Notification No.35/2020 – Central Tax dated 03.04.2020, extended the period for filing appropriate application of revocation of cancellation by 30.09.2021.

16. The petitioner also appears to have file an application on the last date on 30.09.2021 at about 7.13 p.m. However, the petitioner's application has been rejected/returned with the following endorsement in the dash board of the Goods and Services Tax Act portal with the following observation:-

> “'Application for Revocation of Cancelled Registration' cannot be filed after 579 days from date of Cancellation order.”

17. Considering the fact that the Government had itself taken a decision to allow the persons like petitioners to approach the respondents/appropriate authorities for revocation of the registration granted, I find merits in the submission

made by the learned counsel for the petitioner for allowing the writ petition Under Section 30 of the CGST Act, 2017, the petitioner is also required to file the returns along with the tax which ought to have been paid by the petitioner as a condition for entertaining the application in terms of Rule(23) CGST and TNGST Act, 2017 which is also to be complied by the petitioner.

18. Considering the same, the respondents are directed to accept the returns filed in terms of proviso 2 Rule 23 of the either Rules and facilitate the payment of tax by the petitioner. The respondent shall therefore call upon the petitioner to comply with the requirements of the aforesaid Rules and thereafter pass appropriate orders on merits and in accordance with law within a period of 45 days from the date of receipt of a copy of this order to restore the registration of the petitioner.

19. Accordingly, this writ petition stands disposed of with the above observations. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rgm/jas

To

1. The Chairman,
   The Central Board of Indirect Taxes,
   Department of Revenue,
   Ministry of Finance, Government of India,
   North Block, New Delhi.

2. The Superintendent,
   Rasipuram, Namakkal Range.

+1cc to Mr.S.Sivanandam, Advocate, S.R.No.64999
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.64728

W.P.No.24069 of 2021

VBM[co]
NSK 23/12/2021