IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2022

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.1765 of 2022
and
W.M.P.Nos.1924 & 1925 of 2022

Bullseye Event Management,
Abdul Jaffar Abdus Samed Proprietor,
No.1/624, MPT Officers Colony,
Tirusoolam, Chennai - 600 043. ...Petitioner

Vs.

1.The Commissioner of GST &
Central Excise (Appeals - II),
Newry Towers, 2nd Floor, No.2054,
II Avenue, 12th Main Road,
Anna Nagar, Chennai - 600 040.

2.The Superintendent of Central Tax Range I,
Adyar Division,
Chennai.

3.The Deputy/Asst. Commissioner of Central Tax,
Adyar Division, South Commissionerate,
Chennai. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records from the file of second respondent herein culminating in the impugned order dated 22.08.2019 in No.ZA33081907105IN and consequential order by the first respondent dated 15.12.2021 in Appeal No.584/2021 and quash the same and direct the 2nd respondent to restore Registration Certificate No.33AHDPA7178B2ZT.

For Petitioner : Mr.R.Priyakumar

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for the records from the file of second respondent herein culminating in the impugned order dated 22.08.2019 in No.ZA33081907105IN and consequential order by the first respondent dated 15.12.2021 in Appeal No.584/2021 and quash the same and direct the 2nd respondent to restore Registration Certificate No.33AHDPA7178B2ZT.

2. The petitioner is a dealer registered under the GST regime. Since allegedly he has not filed the return for consecutively six months, his registration was cancelled by order dated 22.08.2019. As against which, the petitioner preferred an appeal before the Appellate Authority under Section 107 of the Act. However, the said appeal was rejected through the impugned order dated 15.12.2021 in Appeal No.584/2021 on the sole ground that the appeal could not be entertained, because it is filed beyond the limitation period of three months and the condonable period of one month.

3. Heard Mr.R.Priyakumar, learned counsel appearing for the petitioner, who would submit that, the issue with regard to the filing of appeal under Section 107 of the Act against various orders including the cancellation of registration like the petitioner's case filed before the Appellate Authority whether can be entertained or not in view of the Covid - 19 situation, having been gone into and decided by a learned Judge of this Court in a batch of writ petitions in the matter of Tvl.Suguna Cutpiece Center Vs. The Appellate Deputy Commissioner (ST) (GST) and another in W.P.No.25048 of 2021 dated 31.01.2022.

4. In para 229 of the said judgment, the learned Judge has made the following order :

> "229. In the light of the above discussion, these Writ Petitions are allowed subject to the following conditions:-
>
> i. The petitioners are directed to file their returns for the period prior to the cancellation of registration, if such returns have not been already filed, together with tax defaulted which has not been paid prior to cancellation along with interest for such belated payment of tax and fine and fee fixed for belated filing of returns for the defaulted period under the provisions of the Act, within a period of forty five (45) days from the date of receipt of a copy of this order, if it has not been already paid.

ii. It is made clear that such payment of Tax, Interest, fine / fee and etc. shall not be allowed to be made or adjusted from and out of any Input Tax Credit which may be lying unutilized or unclaimed in the hands of these petitioners.

iii. If any Input Tax Credit has remained utilized, it shall not be utilised until it is scrutinized and approved by an appropriate or a competent officer of the Department.

iv. Only such approved Input Tax Credit shall be allowed for being utilized thereafter for discharging future tax liability under the Act and Rule.

v. The petitioners shall also pay GST and file the returns for the period subsequent to the cancellation of the registration by declaring the correct value of supplies and payment of GST shall also be in cash.

vi. If any Input Tax Credit was earned, it shall be allowed to be utilised only after scrutinising and approving by the respondents or any other competent authority.

vii. The respondents may also impose such restrictions / limitation on petitioners as may be warranted to ensure that there is no undue passing of Input Tax Credit pending such exercise and to ensure that there is no violation or an attempt to do bill trading by taking advantage of this order.

viii. On payment of tax, penalty and uploading of returns, the registration shall stand revived forthwith.

ix. The respondents shall take suitable steps by instructing GST Network, New Delhi to make suitable changes in the architecture of the GST Web portal to allow these petitioners to file their returns and to pay the tax/penalty/fine.

x. The above exercise shall be carried out by the respondents within a period of thirty (30) days from the date of receipt of a copy of this order.

xi. No cost.

xii. Consequently, connected Miscellaneous Petitions are closed."

5. Relying upon this decision, the learned counsel appearing for the petitioner seeks indulgence of this Court against the impugned order, where the appeal of the petitioner was rejected only on the sole ground of delay.

6. Heard Mrs.Hema Muralikrishnan, learned Senior Standing Counsel appearing for the respondents, who would submit that, in

terms of the said order passed by the learned Judge in the case of Tvl.Suguna Cutpiece Center, this writ petition can be disposed of.

7. Having considered the said submissions made by both sides and having gone through the said order passed by the learned Judge of this Court, especially para 229 as quoted herein above, I am of the view that, the order passed by the Appellate Authority only on the ground of delay may not be justifiable in view of the extraordinary situation, where Covid – 19 situation had intervened. Therefore, this Court is inclined to dispose of the writ petition with the following orders :

(i) That the impugned orders are set aside and the matter is remitted back to the respondents, where, the appeal shall be entertained and considered on merits and it may be decided at the earliest, taking into account the conditions imposed or observations made by the learned Judge in the said order in para 229 of the judgment referred to above.

8. With these observations and directions, this Writ Petition is ordered accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sp/sgl
To

1.The Commissioner of GST &
Central Excise (Appeals – II),
Newry Towers, 2nd Floor, No.2054, II Avenue,
12th Main Road, Anna Nagar, Chennai – 600 040.

2.The Superintendent of Central Tax Range I,
Adyar Division, Chennai.

3.The Deputy/Asst. Commissioner of Central Tax,
Adyar Division, South Commissionerate, Chennai.

+1 CC to M/s. Hema Muralikrishnan, Advocate sr 17625.
+1 CC to Mr.R.Priyakumar, Advocate, SR.No.17932 [08/04/2022]

W.P.No.1765 of 2022

BP(CO)
SP(24/03/2022)