IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.3446 OF 2022

Sri Vupputur Alwar Chetty's Charities,
Represented by its Hereditary Trustee,
Mr.Vupputur Swaroop,
Sri Vupputur Alwar Chetty's Charities,
No.183, Govindappa Naicken Street,
Chennai - 600 001.
... Petitioner

Vs

1. The Assistant Commissioner(ST),
   Kothawal Chavadi Assessment Circle,
   Vepery, Chennai - 600 003.

2. The Deputy Commissioner(CT),
   GST Appeals-I, Chennai,
   3rd Floor, CT Annexure Buildings,
   No.1, Greams Road,
   Chennai - 600 006.
... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent with regard to the impugned order passed in Reference Number ZA330219095134L, dated 26.02.2019 and quash the same and also direct the 1st respondent to restore the petitioner's registration of GSTIN.

For Petitioner : Mr.K.M.Malarmannan

For Respondents : Mr.Richardson Wilson
Additional Government Pleader

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent with regard to the impugned order passed in Reference Number ZA330219095134L dated 26.02.2019 and quash the same and also direct the 1st respondent to restore the petitioner's registration of GSTIN.

2.The petitioner is a dealer registered under the TNGST Act, 2017. Though the petitioner, earlier, claimed to have filed the return regularly, subsequently, there has been a default in filing the returns of six consecutive months from 01.01.2018 to December 2019. Thereafter, the Assessing Officer issued a show cause notice on 30.01.2019 calling explanation for non-filing of the monthly returns for more than six months. Though reply was given on 09.02.2019, having considered the same, since there was no plausible reason on the part of the petitioner in non-filing of returns for consecutively six months, the Assessing Authority has decided to cancel the registration and order of cancellation of Registration was passed in this regard on 30.01.2019. Challenging the said order of cancellation, the present writ petition has been filed.

3. Heard Mr.K.M.Malarmannan, learned counsel appearing for the petitioner, who would submit that, though as against the impugned order of cancellation of registration, the petitioner can file an appeal under Section 107 of the said Act, since there has been a limitation of three months period from the date of the order and further one month period being a condonable period, which is already over long back, the petitioner now cannot file an appeal.

4. The reason for such a long delay in filing the appeal, according to the learned counsel for the petitioner is that, the petitioner is a Trust, where there has been inter-se dispute among the trustees and the said issue had gone to this Court in a Civil Suit in C.S.No.7 of 2019, where the original application in O.A.No.37 of 2019 was filed, which was decided by the order of this Court, dated 08.12.2020, wherein the said application was ordered. Based on which only, the present trustees of the petitioner Trust has started looking after the issue and in the meanwhile, since the limitation period granted under the Act has lapsed, the petitioner has approached this Court, seeks indulgence of this Court against the impugned order of cancellation of registration.

5. Heard Mr.Richardson Wilson, learned Additional Government Pleader appearing for the respondents, who would submit that,

this kind of issue, where number of such persons who have not filed appeal under Section 107 of the Act before the Appellate Authority in time or some of them have filed belatedly, for which their appeal have not been entertained and were rejected. Those issue came up for consideration before this court in a batch of Writ Petitions in W.P.No.25048 of 2021 in the matter of Tvl. Suguna Cutpiece Center, Salem Vs. The Appellate Deputy Commissioner (ST) (GST), Salem and Erode & another.

6. A learned Judge of this Court by order dated 31.01.2022, after having exhaustively considered the issue threadbare has given set of directions by giving a solace to these kind of defaultors to file an appeal, even though belatedly, ofcourse with number of conditions as stipulated in para 229 of the said order.

7. If at all the petitioner wants to avail the benefit of the said order passed by the learned Judge, he can do so by filing an appeal complying with the said conditions, he submitted.

8. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials on records.

9. Since the issue raised in this writ petition has already been considered in the exhaustive Judgment of the learned Judge referred above in the matter of Tvl.Suguna Cutpiece Center's case, where in the operative portion of the order, in para 229, the learned Judge has given a set of directions allowing the writ petitions which are reproduced hereunder for easy reference:

> "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."

10. Having gone through the same, I am of the view that, this writ petition also can be ordered, of course on the same terms referred to above in para 229 of the Judgment, dated 31.01.2022 in the Tvl.Suguna Cutpiece Centre's case.

11. Accordingly, this writ petition is disposed of in the same terms by allowing the petition to prefer an appeal, of course by strictly following the conditions imposed thereon in para 229 of the Judgment. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

tsvn/sp

To

1. The Assistant Commissioner(ST),
   Kothawal Chavadi Assessment Circle,
   Vepery, Chennai - 600 003.

2. The Deputy Commissioner(CT),
   GST Appeals-I, Chennai,
   3rd Floor, CT Annexure Buildings,
   No.1, Greams Road,
   Chennai - 600 006.

+1cc to M/s.K.M.Malarmannan, Advocate, S.R.No.12413

+1cc to the Special Government Pleader(Taxes), S.R.No.12487

W.P.No.3446 of 2022

AJS(CO)
RLP(21/03/2022)