IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.4917 of 2022 and
W.M.P.No.5065 of 2022

M/s.Brigap Infra,
Represented by its Proprietor,
No.15/6, 2B Balaji Garudadhri Apartments,
12th Avenue, Ashok Nagar,
Chennai – 600 083. ... Petitioner

Vs.

The Assistant Commissioner,
Saidapet Assessment Circle,
Chennai. ... Respondent

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the respondent in his procedures in Reference No:ZA3309180278652, quash the order dated 17.09.2018 passed therein.

For Petitioner : Mr.P.V.Sudakar

For Respondent : Mr.V.Prasanth Kiran
Government Advocate

O R D E R

The prayer sought for herein is for a Writ of Certiorari, to call for the records of the respondent in his procedures in Reference No:ZA3309180278652, quash the order dated 17.09.2018 passed therein.

2. The petitioner got registered under the Tamil Nadu Goods and Services Tax Act, 2017 (in short 'the GST Act') and according to the petitioner, though he had filed returns periodically, at one point of time, in the year 2018 there was a default, therefore, the respondent decided to cancel the registration. Accordingly, by order dated 17.09.2018, the registration of the petitioner has been cancelled.

3. As against which, even though appeal can be filed under Section 107 of the GST Act to the Appellate Authority, no such appeal could be filed by the petitioner, because of the ill-health continuously faced by the petitioner.

4. In the meanwhile, the Covid-19 situation also had come consecutively for nearly about 2 years, therefore, the petitioner could not file the appeal.

5. In the meanwhile, the limitation to file an appeal since has expired, the petitioner is in piquant situation, where he could not move forward either way. Therefore, he approached this Court by filing the present writ petition challenging the order of cancellation of registration.

6. Mr.P.V.Sudakar, learned counsel appearing for the petitioner would canvass the point that, these kind of issues in number of cases, where against such a registration cancellation, they could not file an appeal, had approached this Court in a batch of writ petitions in W.P.No.25048 of 2021 in the matter of Tvl.Suguna Cutpiece Center Vs. The Appellate Deputy Commissioner (ST) (GST) and another. In that batch of writ petitions, the learned Judge of this Court on 31.01.2022 has passed 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."

7. Relying upon this decision, with the same conditions if the petitioner is permitted to file an appeal, the petitioner would be satisfied, he contended.

8. Mr.V.Prasanth Kiran, learned Government Advocate appearing for the respondent would submit that, in view of the said order passed by the learned Judge, which has been followed in number of cases of similar nature, the same order may be passed in this case also but strictly imposing the said conditions made in the said order.

9. Having considered the said submissions made by both

sides and having regard to the said orders passed by the learned Judge dated 31.01.2022 referred to in Tvl.Suguna Cutpiece Center case, this Court is inclined to pass the following order :

> With the same conditions imposed in para 229 of the said order quoted herein above, this petition is ordered.

10. With these directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-)

//True Copy//

Sub Assistant Registrar

Sp/Sgl

To

The Assistant Commissioner,
Saidapet Assessment Circle,
Chennai.

+1cc to Mr.Sudhakar, Advocate SR.No.15269
+1cc to the Special Government Pleader SR.No.15951

W.P.No.4917 of 2022

MG(CO)
GN(08/06/2022)