IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2022

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.NO.5846 OF 2022
AND
W.M.P.NOS.5937 & 5940 OF 2022

Tamilagam Steel Trading,
Represented by its Managing Partner,
N.Ellappan,
AL-12-22, Chennai Bye Pass Road,
Kumaragiri,
Salem - 636 015. ...Petitioner

Vs.

Assistant Commissioner (Circle),
Salem Rural,
Commercial Taxes and Registration Department,
Commercial Taxes Building,
Pitchards Road, Salem - 636 007. ...Respondent

Prayer :

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the respondent passed in Reference No.ZA330919096596O dated 26.09.2019 and quash the same, as the impugned proceedings is in violation of principles of natural justice, cryptic, arbitrary and further direct the respondent to follow the order passed by this Court in W.P.No.25048 of 2021 dated 31.01.2022 in the batch of writ petitions relating to restoration of cancellation of registration under the TNGST Act, 2017.

For Petitioner : Mr.N.Murali

For Respondent : Mr.V.Prasanth Kiran
Government Advocate

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the respondent passed in Reference No.ZA330919096596O dated 26.09.2019 and quash the same, as the impugned proceedings is in violation of principles of natural justice, cryptic, arbitrary and further to direct the respondent to follow the order passed by this Court in W.P.No.25048 of 2021 dated 31.01.2022 in the batch of writ petitions relating to restoration of cancellation of registration under the TNGST Act, 2017.

2. The petitioner is a dealer registered under the GST Act. Since according to the revenue, he has not filed the return consecutively for six months, the registration of the petitioner was cancelled by order dated 26.09.2019. Challenging the same, the present writ petition has been filed.

3. Even though there is an appeal provision under Section 107 of the GST Act, the petitioner has not chosen to file an appeal and he has straight away approached this Court by filing the present writ petition, the reason for non exhausting the appeal remedy when was questioned, Mr.N.Murali, learned counsel appearing for the petitioner submits that, due to the Covid-19 situation of second and third wave, the appeal could not be filed before the Appellate Authority in time and in the meanwhile, the limitation prescribed under Section 107 of the Act was over and therefore, there is no other option for the petitioner except to approach this Court by filing this writ petition, he contended.

4. I have heard Mr.V.Prasanth Kiran, learned Government Advocate appearing for the respondent, who would submit that, if there is a delay in filing the appeal only due to Covid-19 situation, that aspect has been considered 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, where some directions have been given by the learned Judge imposing certain conditions, based on which, belated appeal can be filed by the person like the petitioner, who has been suffered with the order of cancellation of registration.

5. I have considered the said submissions made by both sides and have perused the materials placed before this Court.

6. The learned Judge, in the said order dated 31.01.2022 in para 229, 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. Since this is one of such case, where the petitioner could not move the Appellate Authority in time, because of Covid-19 situation, I am of the view that, this writ petitioner also can be relegated to approach the Appellate Authority by filing an appeal with a petition as per the conditions imposed in para 229 of the order referred to above.

8. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders :

(i) That the petitioner is hereby directed to approach the Appellate Authority on the terms indicated in para 229 of the order made by this Court in the case of Tvl.Suguna Cutpiece Center case, where if such an appeal is filed within the time stipulated therein, the same shall be entertained and considered and final order shall be passed within the time stipulated therein.

(ii) It is made clear that, within two weeks from the date of receipt of a copy of this order, that appeal shall be filed by the petitioner, failing which, the order will not stand in the way in rejecting such appeal by the Appellate Authority on the ground of delay.

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

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sp/sgl

To

1 Assistant Commissioner (Circle),
Salem Rural,
Commercial Taxes and Registration Department,
Commercial Taxes Building,
Pitchards Road, Salem - 636 007.

2 The Appellate Deputy Commissioner (ST) (GST),
Commercial Taxes Building,
Salem.

+1cc to Mr.N.Murali, Advocate, S.R.No.17597
+1cc to the Special Government Pleader, S.R.No.17903

W.P.No.5846 of 2022

BP(CO)
PM/22/03/2022