IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.Nos.10988 & 10992 of 2022
and
W.M.P.Nos.10576 & 10581 of 2022

Tvl.Sam Agencies,
Rep.by its Proprietor,
Soundara Vinayagam (M/A 45 Yrs)
S/o.Pakkirisamy,
No.20, First Floor,
2nd Cross, Natesan Nagar,
Puducherry - 605 005. ... Petitioner in both W.Ps

Vs

1.The Commissioner of Commercial Tax,
Ellaipillaichavadi,
Puducherry - 605 005.

2.The Joint Commissioner of GST (Appeal-I)
No.26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

3.The Superintendent Goods Division - I,
Pondicherry Municipality I,
Vallalar Nagar, Manjakuppam,
Cuddalore - 607 001. ... Respondents in both W.Ps

PRAYER in W.P.No.10988 of 2022: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, quash the impugned order passed by the 3rd respondent bearing reference number: ZA340519000566L dated 10.05.2019 and further direct the 3rd respondent to restore the petitioner's GST registration bearing tin No.34CKKPS2575N27D.

PRAYER in W.P.No.10992 of 2022: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, quash the impugned order passed by the 2nd respondent i.e., The Joint Commissioner of GST (Appeal-I) bearing Appeal No.309/2021 (GSTA- I) (JC) dated 14.12.2021 against the order dated 10.05.2019 bearing reference number:ZA340519000566L passed by the 3rd respondent and further direct the 3rd respondent to restore the petitioner's GST registration bearing tin No.34CKKPS2575N27D.

For Petitioner: Mr.J.Ashish
[in both W.Ps]

For Respondent: Mr.A.P.Srinivas
[in both W.Ps] Senior Standing Counsel
[For R2]

Mr.J.Kumaran
Additional Government Pleader
[For R1 & R3]

COMMON ORDER

Since the issue raised in these writ petitions is common, with the consent of the learned counsel appearing for both sides, these writ petitions were heard together and are disposed of by this common order.

2. The petitioner was a dealer under the GST Regime. Due to the alleged non-filing of the return for longer period, the registration under the GST Act of the petitioner/dealer was cancelled by the orders of the Revenue dated 18.01.2022. Challenging the said orders, the petitioner filed appeals before the Commissioner of GST & Central Customs (Appeals-1), where also, the orders have been confirmed. Challenging both these orders, the present writ petitions have been filed respectively.

3. The issue raised in these writ petitions has already been decided 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 dated 31.01.2022, wherein, a learned Single Judge, after exhaustively discussed the issue, has given a set of directions at Paragraph No.229 of the order, which reads thus:

> "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."

4. Since the petitioner case is also similar in situation, I am of the view that, the same relief can be extended to the petitioner also.

5. In view of the above, these writ petitions are ordered in terms of Paragraph 229 of the said order in Tvl.Suguna Cutpiece

Center case (cited supra).

6. Accordingly, both the writ petitions are ordered. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1.The Commissioner of Commercial Tax,
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Puducherry - 605 005.

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3.The Superintendent Goods Division - I,
Pondicherry Municipality I,
Vallalar Nagar, Manjakuppam,
Cuddalore - 607 001.

+2ccs to Mr.J.Ashish, Advocate SR.No.29582

+1cc to Mr.Hema Muralikrishnan, Advocate SR.No.29230

W.P.Nos.10988 & 10992 of 2022

MT(CO)
GMY(10/06/2022)