IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.05.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.NO.13406 OF 2022
AND
W.M.P.NOS.12625 AND 12626 OF 2022

J.Jayakrishnan,
Represented by its Proprietor,
Jayaramaraja Jayakrishnan,
No.19, Vellaiyan Road,
Kotturpuram,
Chennai - 600 085. ...Petitioner

Vs

1.The Additional Chief Secretary/
Commissioner of Commercial Taxes,
Ezhilagam,
No.5, Kamaraj Salai,
Chepauk, Chennai - 600 005.

2.The Appellate Deputy Commissioner (ST) (FAC),
Goods and Service Tax,
Coimbatore.

3.The Assistant Commissioner (ST),
Gandhipuram Assessment Circle,
Gandhipuram, Coimbatore.

4.The Assistant Commissioner,
Kotturpuram Assessment Circle,
Integrated Commercial Tax Buildings,
Saidapet, Chennai - 600 035. ...Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the first respondent in Lr.No.Complaint Cell/SC.No.1790412/2021 dated 22.03.2022 and quash the same as illegal and arbitrary and against the Principles of Natural Justice and consequently direct the Respondents to activate the GSTIN of the petitioner.

For Petitioner : Mr.K.M.Malarmannan

For Respondents : Mr.Richardson Wilson
Additional Government Pleader

ORDER

Mr.Richardson Wilson, learned Additional Government Pleader takes notice on behalf of the respondents.

2. The issue pertains to the cancellation of GST registration. The brief facts of the case are that the petitioner was issued with a Show Cause Notice dated 19.12.2018, to show cause as to why the registration granted to the petitioner should not be cancelled for non-filing of statutory returns under the provisions of the respective GST Acts.

3. It appears that the petitioner had also replied to the Show Cause Notice on 01.01.2019 stating that the petitioner could not file return in time due to health problem and financial crisis. Meanwhile, the registration was cancelled. The petitioner preferred an appeal before the Appellate Commissioner under Section 107(1) & (4) of the GST Act, which culminated in an order dated 31.08.2019. The appeal was dismissed stating that the appeal has been filed beyond the period of limitation. The first respondent has now passed the impugned order dated 22.03.2022 without considering the case of the merits. Hence, the present writ petition has been filed.

4. Both the learned counsel for the petitioner as well as the Additional Government Pleader for the respondents submit that the issue is now covered by a detailed order of this Court in a batch of writ petitions in W.P.Nos.25048, 25877, 12738, 17237, 20722, 20945, 21237, 21315, 23374, 24967, 25118, 25146, 25147, 25156, 25678, 12683, 12685, 25026, 26026, 25705, 26187, 26190 & 14508 of 2021 and W.P.No.14241 of 2021 and W.P.Nos.507, 126 & 128 of 2022.

5. The learned Additional Government Pleader for the respondents has confirmed that the said order has not been appealed before the Hon'ble Division Bench. The operative portion from the said order reads as under:-

> "227. This is a fit case for exercising the power under Article 226 of the Constitution of India in favour of the petitioners by quashing the impugned orders and to grant consequential relief to the petitioners. By doing so, the Court is effectuating the object under the GST enactment of levying and collecting just tax from every assessee who either supplies goods or

service. Legitimate Trade and Commerce by every supplier should be allowed to be carried on subject to payment of tax and statutory compliance. Therefore, the impugned orders deserve to be quashed.

228. These petitioners deserve a chance and therefore should be allowed to revive their registration so that they can proceed to regularize the defaults. The authorities acting under the Act may impose penalty with the gravity of lapses committed by these petitioners by issuing notice. If required, the Central Government and the State Government may also suitably amend the Rules to levy penalty so that it acts as a deterrent on others from adopting casual approach.

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 unutilized, 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."

6. This Writ Petition stands disposed of in terms of the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Vacation Officer

// True Copy //

Sub Assistant Registrar

rgm/arb

To

1. The Additional Chief Secretary/
Commissioner of Commercial Taxes,
Ezhilagam,
No.5, Kamaraj Salai,
Chepauk, Chennai – 600 005.

2.The Appellate Deputy Commissioner (ST) (FAC),
Goods and Service Tax,
Coimbatore.

3.The Assistant Commissioner (ST),
Gandhipuram Assessment Circle,
Gandhipuram, Coimbatore.

4.The Assistant Commissioner,
Kotturpuram Assessment Circle,
Integrated Commercial Tax Buildings,
Saidapet, Chennai - 600 035.

+1cc to M/s.K.M.Malarvannan, Advocate Sr.No.31768

+1cc to the Special Government Pleader (Taxes) Sr.No.31781

W.P.No.13406 of 2022
and
W.M.P.Nos.12625 and 12626 of 2022

SJ(CO)
RVM(31/05/2022)