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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	08.12.2021
Pronounced On	01/04/22

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.26024 of 2021
and
W.M.P.No.27471 of 2021
(Through Video Conferencing)

Janakiraman ...Petitioner

Vs.

Assistant Commissioner (Circle),
Ashok Nagar, Zone VI Tamil Nadu,
Greams Road, Annex Building,
Chennai - 600 006. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order bearing reference No.ZA330819045553B, dated 15.08.2019 passed by the respondent, quash the same and direct the respondent to pass orders after considering the returns filed by the petitioner and submissions made by the petitioner.

For Petitioner : Mr.T.R.Ramesh

For Respondent : Mr.N.R.R.Arun Natarajan
Special Government Pleader

O R D E R

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order bearing reference No.ZA330819045553B, dated 15.08.2019 passed by the respondent, quash the same and direct the respondent to pass orders after considering the returns filed by the petitioner and submissions made by the petitioner.

2. By the impugned order dated 15.08.2019, the respondent has cancelled the GST Registration of the petitioner as the petitioner has failed to file returns continuously for a period of six months. Prior to passing of the impugned order, the respondent has issued a Show Cause Notice dated 22.05.2019 to

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the petitioners for replying as to why the GST registration should not be cancelled. It appears that the petitioner has not replied to the said Show Cause Notice which resulted in passing of the impugned order dated 15.08.2019 cancelling the GST Registration of the petitioner.

3.The petitioner thereafter filed an appeal before the Deputy Commissioner (ST) on 11.08.2021 against the order of cancellation registration dated 15.08.2019. The said appeal was rejected / returned on the ground of limitation by a Memorandum dated 13.08.2021. After the rejection of the appeal, the petitioner has approached this Court by way of this Writ Petition.

4.Mr.T.R.Ramesh, the learned counsel for the petitioner submits that the respondent has issued the Show Cause Notice dated 22.05.2019, but the petitioner was unable to give reply to the said Show Cause Notice at that time. It is submitted that even though the petitioner has not replied to the said Show Cause Notice, the respondent ought to have given the justiciable reason for cancelling the GST Registration of the petitioner. Per contra, the respondent has cancelled the GST Registration of the petitioner vide impugned order dated 15.08.2019 on the bald ground that the petitioner has not responded to the Show Cause Notice dated 22.05.2019.

5.The learned counsel for the petitioner further submits that the impugned order of cancellation of registration dated 15.08.2019 was uploaded in the Web Portal and the petitioner long after came to know about the cancellation of the registration vide impugned order dated 15.08.2019 and could not file the appeal before the Deputy Commissioner (ST) against the impugned order of cancellation of registration in time which was rejected / returned on the ground of the limitation. He therefore prays for quashing of the impugned order.

6.Opposing the prayer of the petitioner in this Writ Petition, Mr.N.R.R.Arun Natarajan, the learned Special Government Pleader appearing on behalf of the respondent that the petitioner has not attempted to file appropriate application by uploading the returns and paying the taxes on time. Therefore, the present Writ Petition is liable to be dismissed.

7.Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondent. I have perused the impugned order of cancellation of registration.

8.The issue that arises for consideration in this Writ Petition was detailed considered by this Court in the case Tvl.

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Suguna Cutpiece Center Vs. The Appellate Deputy Commissioner (ST) (GST) and another, in W.P.No.25048 of 2021 etc. batch, vide order dated 31.01.2022, wherein, considering the revenue of the Government, certain reliefs were granted to the petitioners therein. The operative portion of the order reads as under:-

> 216.Since, no useful will be served by not allowing persons like the petitioners to revive their registration and integrate them back into the main stream, I am of the view that the impugned orders are liable to be quashed and with few safeguards.
>
> 217.There are adequate safeguards under the GST enactments which can also be pressed against these petitioners even if their registration are revived so that, there is no abuse by these petitioners and there is enough deterrence against default in either paying tax or in complying with the procedures of filing returns.
>
> 218.Further, the Government requires tax to meet its expenditure. By not bringing these petitioners within the GST fold, unintended privilege may be conferred on these petitioners unfairly to not to pay GST should they end supplying goods and/or services without registration. For example, a person renting out an immoveable property will continue to supply such service irrespective of registration or not.
>
> 219.Therefore, if such a person is not allowed to revive the registration, the GST will not be paid, unless of course, the recipient is liable to pay tax on reverse charge basis. Otherwise, also there will be no payment of value added tax. The ultimate goal under the GST regime will stand defeated. Therefore, these petitioners deserve a right to come back into the GST fold and carry on their trade and business in a legitimate manner.
>
> 220.The provisions of the GST Enactments and the Rules made there under read with various clarifications issued by the Central Government pursuant to the decision of the GST Council and the Notification issued thereunder the respective enactments also make it clear,

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intention is to only facilitate and not to debar and de-recognised assesses from coming back into the GST fold.

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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

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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.

9. In light of the above, this Writ Petition is allowed with the directions given in the above order. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

jen

To

Assistant Commissioner (Circle),
Ashok Nagar, Zone VI Tamil Nadu,
Greams Road, Annex Building,
Chennai - 600 006.

+1cc to Mr.T.R.Ramesh, Advocate, S.R.No.22508
+1cc to the Government Pleader, S.R.No.22990
+1cc to the Special Government Pleader (Taxes) S.R.No.22457

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and
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PA(CO)
RGA(13/04/2022)

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