IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	23.12.2021
Pronounced On	01.04.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.27365 & 27368 of 2021
and
W.M.P.Nos.28875, 28876 & 28880 of 2021

(Through Video Conferencing)

Tvl. GK Digital Printing,
Represented by its Partner P.Venkatesan,
No.26 A, Karumarampalayam,
Moogambikai Nagar, 2nd Street,
Mannarasi Post, Tamil Nadu – 641 607. ... Petitioner in Both W.Ps.

Vs.

1.The Assistant Commissioner (Circle),
Tiruppur Central – I,
Tiruppur.

2.The Appellate Deputy Commissioner (ST) (GST),
Salem and Erode. ... Respondents in Both W.Ps.

Prayer in W.P.No.27365 of 2021:- Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the files of the first respondent in Reference No.ZA331019054504S, dated 16.10.2019 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

Prayer in W.P.No.27368 of 2021:- Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the files of the second respondent in Appeal No.362/2021 dated 27.09.2021 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner
in both W.Ps. : Mr.R.Senniappan

For Respondents
in both W.Ps. : Ms.Amirta Poonkodi Dinakaran
Government Advocate

C O M M O N O R D E R

By this common order, both Writ Petitions are being disposed.

2. W.P.No.27365 of 2021 has been filed for issuance of a Writ of Certiorari, to call for the records relating to the impugned order dated 16.10.2019 of the first respondent bearing Reference No.ZA331019054504S and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

3. By the order dated 16.10.2019 impugned in W.P.No.27365 of 2021, the petitioner's GST registration was cancelled by the first respondent on the ground that the petitioner has failed to file returns continuously for a period of six months.

4. W.P.No.27368 of 2021 has been filed for issuance of a Writ of Certiorari, to call for the records relating to the impugned order dated 27.09.2021 of the second respondent in Appeal No.362/2021 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

5. By the order dated 27.09.2021 impugned in W.P.No.27368 of 2021, the second respondent has dismissed the Appeal No.362/2021 filed by the petitioner under Section 107(1) of the TNGST Act, 2017 against the order dated 16.10.2019 cancelling the GST registration of the petitioner, on the ground of limitation.

6. It is case of the petitioner that the petitioner has been issued with a Show Cause Notice dated 01.10.2019 for replying as to why the GST registration of the petitioner as the petitioner has failed to file returns for above six months. It appears that the petitioner has not replied to the said Show Cause Notice which resulted in cancelling of the petitioner's GST Registration vide impugned order dated 16.10.2019.

7. Instead of filing an application for revocation of cancellation of the registration, the petitioner preferred an appeal before the second respondent in Appeal No.362/2021 against the said order dated 16.10.2019 under Section 107(1) of the TNGST Act, 2017. By the impugned order dated 27.09.2021, the said appeal was dismissed on the ground of limitation with the following observations:-

"And as per Section 107(4) of the TNGST Act, 2017, which reads as follows:

The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months allow it to be presented within further period of one month.

As per the above provision, if the appellants has been prevented for sufficient cause from non-presenting the appeal within the aforesaid period of three months as per Section 107(1) of the TNGST Act, 2017, the appellant has been allowed a further period of one month, only if the appellant has been prevented by sufficient cause from presenting the appeal within period of three months.

Therefore on any accounts an appeal presented after a period of four months from the date of receipt of the decision or order being communicated to a such person shall not be entertained by the Appellate Authority functioning under the TNGST Act, 2017.

The Honourable Supreme Court in Suo-Motu writ petition (Civil) No.3 of 2020 dated:08.03.2021, in view of Global Pandemic Situation across the country, took Suo-Motu cognizance of the situation arising out of the difficulties faced by the litigants in filing petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or any under special law and finally by way of an order dated:08.03.2021 has issued following directions.

> "In computing any period of Limitation for any suit, appeal, application or proceedings, the period from 15.03.2020 till 14.03.2021 shall stand excluded".

And also, Due to steep rise in Covid virus and the extraordinary situation caused by the second outburst of Covid-19 virus, requires extraordinary measures to minimize the hardship of litigant public in the country, the Honourable Supreme Court restored the original order dated:23.03.2020 which extended the period of limitation vide Miscellaneous Application No.665/2021 in SMW(c) No.3/2020 dated:27.04.2021.

In the Appellant case, the order has been communicated to the appellant on 16.10.2019 through online. The appellants had time till 15.01.2020 to file appeal against the order before this forum.

Further the appellant as per section 107(4) also had one month time for sufficient cause from non-presenting the appeal within the period of three months as per section 107(1) of the TNGST Act. Such time of further one month expires on 15.02.2020.

The Appellant had filed the appeal before this forum only on 23.08.2021 by a further delay of one year, six months and 8 days. Therefore appellant is ineligible to take shelter under the above mentioned Supreme Court's order, since the prescribed time limit had expired before the period for which above relaxation was given by the Apex Court.

Even though the excluded period from 15.03.2020 has taken into consideration as per the aforesaid Honourable Supreme Court order, there is a further delay of 29 days for which, there is no provision under the TNGST Act, 2017 to allow the delay and entertain the appeal filed by the appellant, I dismiss the appeal filed by the appellant being barred by limitation.”

8. The learned counsel for the petitioner submits that the Central Board of Indirect Taxes and Customs further issued Notification No. 19/2021 - Central Tax, dated 01.06.2021, wherein, for the registered persons who failed to furnish the return in FORM GSTR-3B for the months /quarter of July, 2017 to April, 2021, by the due date but furnish the said return between the period from the 1st day of June, 2021 to the 31st day of August, 2021, the total amount of late fee under Section 47 of the CGST Act, 2017 was waived which is in excess of five hundred rupees.

9. It is submitted that it was precisely to help such struggling dealers in the initial phase of GST that on 25.06.2020, the Government extended the time limit for seeing revocation of cancellation of registration up to 31.08.2020 for all dealers whose registration was cancelled from July 2017 to 12th June, 2020 and this deadline having expired after 15.03.2020 (Covid – 19 Lockdown), is deemed to be extended until further orders of the Hon'ble Supreme Court. Incidentally, the Government of India has extended the time limit for a period of one month till 30.09.2021 vide Notification No.34 – Central Tax, dated 29.08.2021.

10. It is submitted that the petitioner has filed returns up to October 2020 immediately after the receipt of the impugned cancellation order with payment of late fee and thereafter made further payment of late fee up to November 2021 as per Notification No.19/2021 – Central Tax, dated 01.06.2021 and 29.08.2021. However, the petitioner has not been permitted to file the requisite returns with payment of GST due to the cancellation registration vide impugned order 16.10.2019.

11. The learned counsel for the petitioner submits that the first respondent has issued Show Cause Notice dated 01.10.2019, 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 first respondent ought to have given justiciable reason for cancelling the GST registration of the petitioner. Per contra, the first respondent has cancelled the GST registration of the petitioner vide impugned order dated 16.10.2019 on the bald ground that the petitioner has not responded to the said Show Cause Notice dated 01.10.2019.

12. It is submitted that the petitioner came to know about the cancellation of registration vide impugned order dated 16.10.2019 belatedly. The petitioner preferred an appeal before the second respondent in Appeal No.362/2021 which was also dismissed on the ground that the petitioner has filed the appeal after the expiry of filing of the appeal against the order cancellation of registration dated 16.10.2019. He therefore prays for quashing the impugned orders and revocation of the cancellation of the GST registration of the petitioner.

13. Opposing the prayer of the petitioner in this Writ Petition, the learned Government Advocate for the respondents submits that the petitioner has not filed returns for above six months. It is submitted that the petitioner has either filed an application for revocation

of cancellation of registration or filed the appeal before the second respondent in time and therefore, the appeal filed by the petitioner was dismissed on the ground of limitation. She therefore prays for dismissal of this Writ Petition.

14. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents. I have perused the impugned order of cancellation of registration.

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

16. In light of the above, this Writ Petitions are 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

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To

1.The Assistant Commissioner (Circle),
Tiruppur Central - I,
Tiruppur.

2.The Appellate Deputy Commissioner (ST) (GST),
Salem and Erode.

+1 cc to Government Pleader Sr.NO.22991
+1 cc to Spl.Government Pleader(Taxes) Sr.NO. 22458
+1 cc to Mr.R.Senniappan, Advocate Sr.NO. 22312

W.P.Nos.27365 & 27368 of 2021
and W.M.P.Nos.28875,
28876 & 28880 of 2021

PA(CO)
A.SK(13/04/2022)