IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2022

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THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P.No.32877 of 2022

Hemasri Enterprises
Represented by its Proprietor
Sakthi Narayanan ... Petitioner

-Vs.-

1. The Appellate Authority / The Deputy Commissioner (ST) (FAC)
GST-Appeal, Chennai-II, C.T.Annexe Building, 3rd Floor
No.1, Greams Road, Chennai-600 006.

2. The Assistant Commissioner (ST)
Sriperumbudur Assessment Circle
Zone XII : Chennai-South, Chennai. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent pertaining to the impugned order dated 20.10.2022 in Rc.No.794/2022/A1 and quash the same and consequently, direct the respondents to revoke the cancellation of the GST registration of the petitioner's firm.

For Petitioner : Mr.P.Suresh Babu
For Respondents : Mr.V.Prashanth Kiran
Government Advocate

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O R D E R

Captioned writ petition has been filed assailing an 'order dated 20.10.2022 bearing reference Rc.No.794/2022/A1' [hereinafter 'impugned order' for the sake of convenience and brevity] made by the first respondent. This is Certiorari limb of prayer. To be noted, Mandamus limb of the prayer is to direct the respondents to revoke cancellation of 'GST' ['Goods and Services Tax'] registration of the writ petitioner.

2. Before proceeding further, it is to be noted that prayer reads 'writ petitioner's firm' but the cause title refers to Hemasri Enterprises and it says it is represented by proprietor. A proprietary concern is obviously not a firm. Though the array of parties has not been happily worded / correctly set out, I construe Mr.Sakthi Narayanan carrying on business in the name and style of 'Hemasri Enterprises' as sole proprietor as the petitioner.

3. Short facts will suffice owing to narrow and acute compass on

which the matter turns.

4. Learned counsel for writ petitioner submits that writ petitioner is a Manpower Agency; that writ petitioner obtained GST registration on 23.04.2018; that the GST registration number is GST : 33GHEPS9579F2ZN; that the second respondent issued a show cause notice on 02.09.2021 qua cancellation of registration *inter alia* for not filing returns; that thereafter, the second respondent passed an order dated 10.11.2021 bearing Reference No.ZA331121027794V cancelling the registration; that this order was instantaneously uploaded; that therefore 10.11.2021 is the date of communication of cancellation order to writ petitioner; that as against such cancellation, writ petitioner has two remedies, one is seeking revocation under Section 30 of 'Tamil Nadu Goods and Services Tax Act, 2017 (Tamil Nadu Act 19 of 2017)' [hereinafter 'TN-GST Act' for the sake of convenience and clarity] and second remedy is a statutory appeal under Section 107 of TN-GST Act; that writ petitioner chose the second route of statutory appeal; that statutory appeal was filed on 29.09.2022; that the first respondent -

Appellate Authority dismissed the statutory appeal as barred by limitation in and by the impugned order dated 20.10.2022.

5. As the Appellate Authority has dismissed the matter on the ground of limitation, it will suffice to examine the chronicle. Before this Writ Court does that, it is necessary to notice that a combined reading of sub-sections (1) and (4) of Section 107 of TN-GST Act make it clear that the prescribed period of limitation is three months from the date of communication of order and condonable period is a further period of one month. It is therefore, to be noted that the unit of limitation qua prescribed period and condonable period have been set out in months and not in days.

6. In this view of the matter, the dates would have to be computed by applying the time honoured ***Dodds Vs. Walker*** principle [***Dodds Vs. Walker*** reported in ***(1981) 2 All ER 609 (HL)***] i.e., the last date of succeeding English calendar month.

7. In the case on hand, reckoning date is 10.11.2021 being the date on which the impugned order was communicated to writ petitioner. This

date falls within the exclusion period owing to Corona virus pandemic and consequent lock down, which is collectively referred to as 'COVID 19 situation' wherein Hon'ble Supreme Court vide Suo Motu proceedings in ***COGNIZANCE FOR EXTENSION OF LIMITATION, IN RE*** reported in ***(2022) 3 SCC 117***, excluded the period from 15.03.2020 to 28.02.2022. In this order, Hon'ble Supreme Court made it clear that if the expiry of period of limitation falls within this period, irrespective of remaining available period a litigant will have 90 days time from 01.03.2022. This means that in the case on hand, computed from 01.03.2022, 90 days period elapsed on 30.05.2022 and further condonable period of one month elapsed on 30.06.2022.

8. As already alluded to supra, appeal was filed only on 29.09.2022. Therefore, the order of Hon'ble Supreme Court does not enure to the benefit of the writ petitioner. In this view of the matter, this Writ Court finds no ground to interfere with the impugned order.

9. Before writing the sequitur and dropping the curtains on the captioned writ petition, it is deemed appropriate to record that this Writ

Court is informed that it is open to writ petitioner to apply for GST registration afresh. If the writ petitioner chooses to do so, the application of writ petitioner shall be considered as expeditiously as the business of authority concerned would permit albeit in accordance with law.

10. The sequitur is, captioned Writ Petition fails and the same is dismissed. There shall be no order as to costs.

07.12.2022

Speaking/Non-speaking order
Index: Yes/No
Internet : Yes/No

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To

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M.SUNDAR,J.

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