



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.03.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P (MD) .No.4264 of 2022

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Tvl.Alamelu Contracts,
Represented by its partner,
R.Lakshmanan

... Petitioner

Vs.

1. The Commissioner of Commercial Taxes,
O/o The Principal and Special Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2. The Assistant Commissioner (ST) (Circle)
Sivagangai Assessment Circle,
Commercial Taxes Office,
52, Perumal Kovil Street,
Sivagangai-630 561.

3. The Deputy State Tax Officer (ST) (Circle)
Sivagangai Assessment Circle,
Commercial Taxes Office,
52, Perumal Kovil Street,
Sivagangai-630 561.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of the second respondent in Reference No.ZA330719050317G dated 16.07.2019 and quash the same and consequently direct the respondents to revoke the cancellation of petitioner's GSTIN.33ABHFA1065H1ZT.

For Petitioner

: Mr.B.Roopan

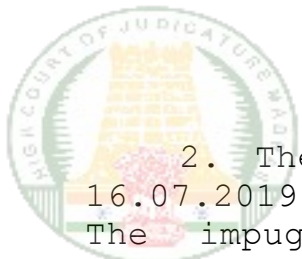
For Respondents

: Mr.K.S.Selva Ganesan,

Additional Government Pleader

ORDER

Heard the learned counsel for the petitioner and the learned counsel for the respondents



2. The petitioner has challenged the impugned order, dated 16.07.2019, cancelling the Goods and Services Tax Registration. The impugned order preceded the show cause notice, dated 04.07.2019. It is the specific case of the petitioner that the petitioner was not having business and therefore, the petitioner did not file returns. It is submitted that the petitioner in any event would have filed only a nil return and that no prejudice has been caused to the respondents.

3. The learned counsel for the petitioner further submits that the order was communicated electronically and since the petitioner had closed down the business, the petitioner was unaware of the cancellation of the registration. It is therefore submitted that the impugned order is liable to set aside. In this connection, the learned counsel for the petitioner has relied on the decision of this Court in **W.P.Nos.25048, 25877, 12738 of 2021 and etc... batch (Tvl.Suguna Cutpiece Center Vs Appellate Deputy Commissioner (ST) (GST) and others)**, dated 31.01.2022 and submits that the present writ petition deserves to be allowed in terms of the above order.

4. Opposing the prayer, the learned counsel for the respondents submits that the Principal Secretary/Commissioner of Commercial Taxes, Ezhilagam by a circular dated 07.04.2021, bearing reference P/35/2021-ADC(RC AND M)-CCT-CTD in Paragraph 6.5 has clarified as under:

6.5. If any appeals have been filed against the Cancellation of Registration order by the Tax Payers, and if the said period falls beyond the period the prescribed period specified under Section 107, then the Deputy Commissioner, GST Appeals and Joint Commissioner, GST Appeals shall admit the application and passed order on merits if the prescribed period specified under Section 107 available with effect from 15.03.2021 after excluding the period from 15.03.2020 to 14.03.2021.

5. The learned counsel for the respondents further submits that the petitioner was given time to file an application against the impugned order but failed to exercise such action and therefore no latitude should be given to the petitioner under the provisions of the Goods and Service Tax Act. It is therefore submitted that the writ petition is liable to be dismissed.

6. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents.



7. The case of the petitioner is quite similar to the cases of the petitioner in the above batch of cases where some of whom had filed an appeal beyond the period of limitation which some had directly filed a writ petition against the order cancelling the registration. There, also further delay was in filing the writ petition. However, considering the over all facts and circumstances of the case, it was held that no useful purpose will be served by keeping such assessee out of the Goods and Services Tax regime, as such assessee would still continue to do business and supply goods and not by bringing them back to the Goods and Service Tax tax fold/regime only the revenue only suffer. Considering that the relief has been granted under similar circumstances, I am inclined to allow this writ petition in terms of the safeguards stipulated in the said order. The direction given there in are reproduced below:

221. While exercising jurisdiction, under Article 226 of the Constitution, the powers of the Court to do justice i.e., what is good for the society, can neither be restricted nor curtailed. This power under Article 226 can be exercised to effectuate the rule of law.

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.

8. The writ petition stands allowed in terms of the above directions. No costs.

Sd/-

Assistant Registrar (P&A)

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/ /2022

Sub Assistant Registrar (CS)

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To

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of Commercial Taxes,
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+1 CC to M/s.SPL GP (SR-11548[F] dated 11/03/2022)

+1 CC to M/s.B.ROOBAN, Advocate (SR-11233[F] dated 10/03/2022)

W.P (MD) .No.4264 of 2022

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USK/31.03.2022/5P/6C