BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2022

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Writ Petition (MD) No.19389 of 2022
and
W.M.P.(MD)No.14153 of 2022

Tvl.A.S.Lakshmi,
Rep. By its Partner, A.Ramesh,
Plot Nos.169 and 170, S.No.3/1A2A,
Thiruppuvanam Nelmudikarai Village,
Thiruppuvanam, Madurai – 630 611. .. Petitioner

Versus

1.The Superintendent of CGST/
Madurai-II Division/Sivagangai Range.

2.The Joint Commissioner of GST (Appeals),
Coimbatore/Circuit Office, Madurai,
No.4, Lal Bahadur Shashtri Marg,
C.R. Buildings, Madurai – 2. .. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the first respondent in Reference No.ZA3301210816231, dated 22.01.2021, quash the same as illegal, invalid and against the principles of natural justice and further direct the respondents to revoke the cancellation of the petitioner's registration and restore the petitioner's GSTIN: 33ABPFA4370H1ZF.

For Petitioner : Mr.A.Chandrasekaran

For Respondents : Mrs.S.Ragaventhre
Junior Standing Counsel

ORDER

The petitioner filed this Writ Petition challenging the cancellation of their registration under GSTIN:33ABPFA4370H1ZF on the ground that the first respondent cancelled their registration without giving an opportunity to the petitioner, which is violative of the principles of natural justice.

2.The petitioner is a dealer of crackers and fireworks and carrying on business from the year 2019 onwards and registered under the Central Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act"]. The petitioner not filed GST returns for a continuous period of six months. Hence, show cause notice issued proposing to cancel their registration. Further, the petitioner not filed application for revoking the cancellation of registration within the specified period under Section 30 of the CGST Act.

3.The contention of the petitioner is that they are regularly filing GST returns from 21.08.2019. Due to Covid-19 Pandemic and the consequent nationwide lock down, the petitioner's business totally shattered and no one was helping them in the business. They engaged an Accountant for the purpose of filing returns and he alone had access to the GST portal for filing returns. Since there was no business, the petitioner not informed their Accountant about the business and hence, the Accountant failed to upload the periodical returns in the Portal. Thereafter, the first respondent issued a notice on 07.01.2021 for cancellation of registration. Further, the petitioner was directed to appear in person on 31.12.2020 at 11.30 pm., even prior to issuance of show cause notice dated 07.01.2021, cancelled the registration certificate of the petitioner with effect from 07.01.2021, which shows total non-application mind by the first respondent. The petitioner failed to file returns, since there was no business or any tax liability. When the petitioner attempted to file Nil returns, to their shock and surprise, their filing was not accepted in the Portal, then only, petitioner came to know that their registration certificate was cancelled. Thereafter, the petitioner filed an appeal before the second respondent on 04.07.2022 in Appeal No.70 of 2022. The second respondent rejected the petitioner's appeal as time barred, vide his order in DIN No. 20220859KV00005505ED, dated 03.08.2022.

4.The petitioner submits that the respondent Department ought to have accepted the filing request and ordered for revocation of cancellation by following the order of the Hon'ble Supreme Court, dated 10.01.2022, in Miscellaneous Application No.665 of 2021, wherein general extension of time had been granted in the case of filing of tax returns and other related issues.

Further, this Court in the case of **Tvl.Suguna Cutpiece Center vs. Appellate Deputy Commissioner (ST) (GST) and others [W.P.No.25048 of 2021 etc. batch]**, by order dated 31.01.2022, set aside the cancellation of registration order and allowed the applicants therein to approach the authorities with certain conditions. The petitioner is also on the same footing and hence, the revocation of the petitioner's registration has to be considered. Further, the petitioner, who is a registered assessee, is only contributing revenue to the respondent Department. Due to cancellation of registration, the petitioner is unable to carry on their business. Hence, the petitioner filed this Writ Petition.

5.Mrs.S.Ragaventhre, learned Standing Counsel appearing for the respondents submits that the petitioner had failed to file their returns for continuous period of six months. Hence, show cause notice was issued. The petitioner failed to respond to the show cause notice and failed to file an application for revocation of cancellation of registration within a period of 90 days as per Section 30 of the CGST Act. Further, the petitioner failed to avail the extended period of limitation granted by the Hon'ble Supreme Court. Considering all these aspects, the petitioner's appeal has been rejected, confirming the cancellation of registration.

6.Considering the submissions and on perusal of the materials, this Court finds that due to Covid-19 Pandemic, there have been total dislocation of business. Since the petitioner was not conversant in uploading the return particulars in the Web Portal The petitioner appointed a part-time Accountant, who was technically qualified and conversant in uploading return particulars in the prescribed form in the Web Portal. Further, during Covid-19 Pandemic, the entire country was under lock down and the business was totally in disarray. By getting registration of dealer, the revenue gets benefitted by collecting tax. Due to cancellation of the registration certificate, the petitioner is unable to carry on their business and no supplier or buyer will be willing to have a business transaction with the petitioner. Further, this case is similar to the cases of the petitioners in **Tvl.Suguna Cutpiece Vs Appellate Deputy Commissioner (ST) (GST) and others (W.P.Nos.25048, 25877, 12738 of 2021 etc.. batch, dated 31.01.2022)**. There some of the petitioners filed appeals beyond the period of limitation for filing application for revocation of cancellation, while some of them directly filed writ petitions against the order cancelling the registration. While some of them filed appeals beyond the statutory period of limitation, there was a further delay 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 those petitioners out of the Goods and Services Tax regime, as the assessee would still continue to do the business and supply goods/services. By not bringing them back to the Goods and Services Tax fold/regime, it would not further the interest of the revenue. Relief was granted under similar circumstances with the following directions:-

> *"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 either in 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 immovable 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, intention is to only facilitate and not to debar and de~recognised assesses from coming back into the GST fold.

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." "

6. This Court is inclined to allow this Writ Petition in terms of the above safeguards. Accordingly, this Writ Petition is allowed subject to the above conditions. No costs. Consequently, connected Miscellaneous Petition is closed.

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To

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Madurai-II Division/Sivagangai Range.

2.The Joint Commissioner of GST (Appeals),
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M.NIRMAL KUMAR, J.

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ORDER MADE IN
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