BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.09.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P(MD).No.20637 of 2022
and
W.M.P.(MD).No.14961 of 2022

Sethuraman Suseela @ Chithra ... Petitioner

Vs.

1.The Commissioner of GST,
Commissionerate,
Madurai North East Range,
Office of Commissioner of GST &
Central Excise (Appeals), Coimbatore,
Circuit Office, Madurai.

2.The Superintendent of GST,
Madurai East, Thallakulam,
Madurai. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the second respondent in Reference Number:ZA331220131619Y, dated 25.12.2020 and order of the first respondent in Appeal A.No.39/2022-GST, dated 05.07.2022 and quash the same as illegal and consequently directing the respondents to restore the Goods and Service Tax Registration.

For Petitioner : Mr.D.Ramesh Kumar

For Respondents : Mr.K.Prabhu
Junior Standing Counsel

ORDER

This writ petition has been filed to quash the impugned order passed by the second respondent in Reference Number:ZA331220131619Y, dated 25.12.2020 and order of the first respondent in Appeal A.No.39/2022-GST, dated 05.07.2022 and consequently to direct the respondents to restore the Goods and Service Tax Registration.

2.Mr.K.Prabhu, learned Junior Standing Counsel takes notice for the respondents. By consent, this writ petition is taken up for final disposal at the admission stage itself.

3.The learned counsel appearing for the petitioner submitted that the petitioner is a running a construction business in the name and style of "Sethuraman Suseela @ Chithra". The petitioner is the proprietor for the said business and it was duly registered before the Second respondent under GST Act and he has filed his returns and paid GST without any delay. The petitioner used to engage private accountant for the purpose of filing returns and who alone had the access to the GST portal for filing returns. Due to

Covid -19 pandemic situation, there was no business and hence, the returns could not be filed. He further submitted that a show cause notice, dated 11.12.2020 was issued for the reason that the accountant failed to upload particulars in the GST portal, continuously for more than six months. Due to which, his registration number was cancelled on 25.01.2020. Thereafter, the petitioner filed an appeal and the same was taken on file by the first respondent in Appeal No.39 of 2022 GST, but the same was rejected for the reason that it was beyond the period of limitation. Due to cancellation of registration, the petitioner is unable to continue business and the same came to a grinding halt. Further, it would be beneficial for the department to collect the taxes, if registration restored.

4.He further submitted that the Principal Secretary/Commissioner of Commercial Taxes vide proceedings, dated 07.04.2022 citing the order of the Hon'ble Apex Court directed all the its officials of the department to direct the proper officers to exclude the period from 15.03.2020 to 28.02.2022 for the purpose of computing the limitation. Further, in support of his contention, he submitted that on similar circumstances in several cases, this Court condoned the delay. He relied on the decision of this Court in the case of ***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, wherein, this Court condoned the delay.

5.The learned Junior Standing Counsel appearing for the respondents submitted that the petitioner's license has been cancelled, since the petitioner failed to file returns continuously for a period of six months. Thereafter a show cause notice was issued to the petitioner on 11.12.2020. The petitioner failed to respond to the same and thereafter, the registration was cancelled. Hence, he prayed for dismissal of the writ petition.

6.Considering the submission and perusal of the materials, this Court is of the view that restoring the registration would not cause any harm to the department on the other hand it would be beneficial for the state to earn revenue. Further, in the case of ***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 petitioner had filed an appeal beyond the period of limitation either for filing application for revocation of cancellation, while some of them had directly filed a writ petition against the order cancelling the registration. While some of them filed appeal beyond the statutory period of limitation, there was 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 such assessee would still continue to do business and supply goods/services. By not bringing them back to the Goods and Services Tax fold/regime, 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.*
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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.*
>
> *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.

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."

7.This Court 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, the connected writ miscellaneous petition is closed.

01.09.2022

Index : Yes / No
Internet : Yes/ No
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M.NIRMAL KUMAR, J.

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