BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.10.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.23179 of 2022

M/s.Immanuvel Dharmaraja Store,
Rep. By its Proprietor,
Mr.Dharmaraj Jayakumar Sundararaj,
No.211H3, Dharapuram Road,
Oddanchatram,
Dindigul – 624 619. ... Petitioner

Vs.

1. The Appellate Deputy Commissioner (GST),
   Commercial Taxes Building,
   Madurai - 625 020.

2. The Assistant Commissioner (ST),
   Palani II,
   Assessment Circle Palani II,
   Palani. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records in respect of the impugned order dated 05.10.2021 issued by the first respondent and to quash the same.

For Petitioner : Mr.L.Sriram

For Respondents : Mr.M.Siddharthan
Additional Government Pleader

O R D E R

This Writ Petition has been filed challenging the order of cancellation of the Registration Certificate on the premise that the Petitioner has failed to file Goods and Services Tax monthly returns. Consequently, the Registration Certificate was cancelled with effect from 31.03.2018 in view of Section 29 of the Central Goods and Services Tax Act, 2017.

2. It is submitted by the learned counsel for the Petitioner that the Petitioner is the Proprietor of M/s.Immanuvel Dharamaraja Store. The Petitioner failed to file the monthly returns for the period from June 2019 to August 2021. Further, a show cause notice dated 24.05.2019 was issued by the 2nd Respondent seeking explanation for non-filing of the returns. Subsequently, the Petitioner have paid dues from June 2019 to August 2021 including the tax amount and penalty. He further submitted that he was unable to pay tax from September 2021, till the registration was cancelled

on 05.09.2019 with effect from 31.03.2018. As against the said order of cancellation, he preferred an appeal before the appellate authority. The appellate authority has rejected the appeal vide order dated 05.10.2021 on the ground that it was beyond the period of limitation.

3. It is submitted by the learned counsel for the Petitioner that in identical circumstances, this Court, in the case of ***Tvl.Suguna Cutpiece Vs The Appellate Deputy Commissioner (ST) (GST) and others (W.P.Nos. 25048, 25877, 12738 of 2021 etc., batch)***, dated 31.01.2022, issued the following directions:

> *"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.*

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."

The same has been consistently thereafter followed by this Court in various decisions, viz.,

a) ***M/s.Maaruthi Foundations Private Limited Vs Deputy Commissioner (ST) (FAC),*** reported in ***2022 (5) TMI 405*** *b)* ***J.Jayakrishnan Vs The Additional Chief Secretary/Commissioner of Commercial Taxes, Chennai*** reported in ***2022 (7) TMI 1226***

c) ***TVL.Jeyalakshmi Store represented by its Proprietor, Sivanu Pandian Vs Commissioner of Commercial Taxes*** reported in ***2022 (7) TMI 1275***

d) ***M/s.Pearl and Company Vs The Commissioner of Commercial Taxes*** in W.P(MD)No.19127 of 2022.

4. In view of the fact that this Court has been consistently following the directions issued 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)*** and the Revenue/Department has also accepted the said view as evident from the fact that no appeal has been filed in any of the matters, this Court intends to follow the above order of this Court.

5. In view of the same, this Court feels that the benefit extended by this Court in the earlier orders referred to above in *Suguna Cutpiece Centre's case* cited supra, may be extended to the Petitioner.

6. This Writ Petition is ordered on the same terms mentioned in paragraph 229 of the order of *Suguna Cutpiece Centre* (cited *supra)*. No costs.

10.10.2022

Index : Yes / No
Speaking Order : Yes / No

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To

1. The Appellate Deputy Commissioner (GST),
   Commercial Taxes Building,
   Madurai 625 020.

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   Palani II,
   Assessment Circle Palani II,
   Palani.

MOHAMMED SHAFFIQ, J.

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