BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.10.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.24128 of 2022
and
W.M.P.(MD).No.18237 of 2022

Muthu Subbuah Ayyadurai
GSTN 33AELPA2331M2ZR,
144/3, Balan Nagar, South Thittankulam,
Kovilpatti, Thoothujudi. ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
Office of the Principal and Special Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The Deputy Commissioner (ST),
GST Appeal, Madurai & Tirunelveli,
Commercial Taxes Buildings,
Palayamkottai, Tirunelveli.

3.The State Tax Officer (ST) (Circle),
Kovilpatti Assessment Circle,
Commercial Taxes Buildings,
Kovilpatti. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the 3rd respondent in Reference No.ZA330122288053Z dated 29.01.2022 and order dated 24.08.2022 passed by the 2nd respondent in DR No.651/2022, to quash the same as illegal, arbitrary and direct the respondents to revoke the cancellation of petitioners GSTN registration No 33AELPA2331M2ZR.

For Petitioner :Mr.S.Karunakar
For Respondents :Mr.T.Amjadkhan
Government Advocate

O R D E R

This Writ Petition has been filed to direct the Respondents to revoke the cancellation of GST registration and restore the same.

2.The petitioner has not filed Return in GSTR for the period of six months. The 3rd respondent has cancelled the GST registration of the petitioner, by the Order dated 29.01.2022.

3. It is submitted by the learned counsel for the Petitioner that due to the ill-health he failed to furnish the returns for a period of six months.

Hence, the GST Registration of the Petitioner was cancelled by the 3rd Respondent vide order dated 29.01.2022. As against the same, the petitioner had preferred an appeal before the 2nd respondent which was also rejected vide order dated 24.08.2022 as inadmissible

4. 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***.

5. 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.

6. 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.

7. This Writ Petition is ordered on the same terms mentioned in paragraph 229 of the order of *Suguna Cutpiece Centre* (cited *supra)*. No costs. Consequently, connected miscellaneous petition is also closed.

20.10.2022

Index : Yes / No
Speaking Order : Yes / No

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MOHAMMED SHAFFIQ, J.

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