



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.04.2022**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P. (MD) No.22874 of 2021

and

W.M.P. (MD) No.19353 of 2021

WEB COPY

G.Sadayaramanujam

... Petitioner

/vs./

1.The Assistant Commissioner (ST),
Commercial Tax, Gandhiji Road,
SIDCO Compound,
Theni -2.

2.GGN Spinning Mill (P) Ltd.,
7, East Market,
Theni 625 531.

3.G.Susila

4.G.Balamurugan

5.G.Prabhakar

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the 1st respondent to receive the tax due of Rs.6,45,414/- (till Nov-21) and Rs.2,81,000/- (up to date for December 2021 approximately) in respect of GSTIN No.33AAACG6670M1ZE without penalty by providing an user ID and password temporarily so that the petitioner can file GST-R1 and GST-R3B returns regularly along with his future taxes within a time to be stipulated by this Court based on the communication dated 15.12.2021 by the 1st respondent.

For Petitioner : Mr.N.Mohan

For R1 : Mr.M.Prakash
Additional Government Pleader

For R2 to R5 : Mr.R.Anand for
M/S.King and Partridge

ORDER

The petitioner has filed this writ petition for a Mandamus to direct the 1st respondent to receive the tax due of Rs.6,45,414/- (till Nov-21) and Rs.2,81,000/- (up to date for December 2021 approximately) in respect of GSTIN No.33AAACG6670M1ZE without penalty by providing an user ID and password temporarily, so that



the petitioner can file GST-R1 and GST-R3B returns regularly along with his future taxes based on the communication dated 15.12.2021 by the 1st respondent.

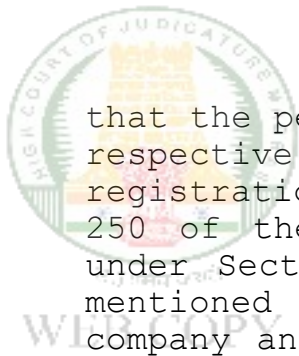
2.The writ petition was earlier disposed of by an order dated 09.02.2022 with the following observations:-

"7.The writ petition has been filed for a very wide relief. The petitioner is willing to pay the tax for the period commencing from April 2021 for the supplies made from Unit B. On the date of filing this writ petition, a sum of Rs.6,54,414+2,81,000/- was approximately due. The learned counsel for the petitioner submitted that as of now, liability would have further increased to approximately Rs.12 lakhs. I am of the view that the petitioner should be allowed to pay the tax and comply with the requirements of the Act for unit B atleast, since unit A has been leased out to a third party, who has access to password. The respondents are not without any remedy. They can issue appropriate notice to the company to recover the tax due and also impose penalty in accordance with law. There shall be a direction to the respondent to provide user ID and password temporarily to the petitioner to facilitate the petitioner to file GST returns (GST-R1 and GST-R3B)

8. The respondents are directed to furnish the same to the petitioner within a period of fifteen days from the date of receipt of copy of this order. The respondents are also given liberty to initiate appropriate proceedings against the company for any default in payment of tax and also imposed penalty. It is open for the petitioner to defend himself in the said proceedings. The writ petition is disposed of with the above observations. No costs. Consequently, the connected Miscellaneous Petition is closed."

3.Thereafter, the private respondents herein, who are the petitioner's niece and nephews through the petitioner's brother, late.Mr.Gurusamy filed an application for restoring the writ petition by stating that they have filed Vakalat and despite the Vakalat having been filed, their name was not printed in the cause list and therefore orders came to be exparte without they being heard and therefore they requested for recalling of the order. Under these circumstances, an order was passed by this Court on 21.03.2022 by recalling the order passed on 09.02.2022 disposing of the present writ petition.

4.The prayer in this writ petition is vehemently opposed by the learned counsel for the private respondents 2 to 5 on the ground



that the petitioner has an alternate remedy under Section 107 of the respective GST enactments to challenge the order cancelling the registration. That apart, it is submitted that in terms of Section 250 of the Companies Act, 2013, if the company stands dissolved under Section 248 of the said Act, it shall on and from the date mentioned in the notice of dissolution, cease to operate as a company and the certificate of incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realizing the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.

5.The learned counsel for the respondents 2 to 5 submits that the name of the company was struck off primarily on the ground that the returns were not filed. However, a reading of Section 248 of the Companies Act, 2013 seems to indicate that the Registrar would to strike off the name of the companies under the following circumstances:-

"Section 248: Power of Registrar to remove name of company from register of companies.

248. (1) Where the Registrar has reasonable cause to believe that—

(a) a company has failed to commence its business within one year of its incorporation or;

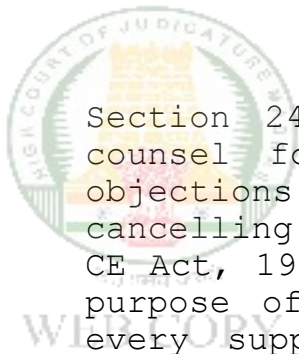
(b) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay within a period of one hundred and eighty days from the date of incorporation of a company and a declaration under sub-section (1) of section 11 to this effect has not been filed within one hundred and eighty days of its incorporation; or

(c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455 or

(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10A; or

(e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12"

6.None of the conditions stipulated above are attracted as one unit of the petitioner company, namely Unit B under the control of the petitioner is carrying on business. Section 250 of the Companies Act, 2013 would apply only in case of company stands dissolved under



Section 248 of the Act. Therefore, the argument of the learned counsel for the respondents 2 to 5 has no merits. The other objections that an appeal should be filed against the order cancelling the registration under Section 107 of the Tamil Nadu HR & CE Act, 1959, CGST Act/SGST Act is also of have no relevance as the purpose of the GST enactments is to ensure collection of tax on every supply made. In this case, the private respondents have deliberately forced default.

7.In this case, there is a deliberate attempt on the part of the private respondents to close down the business and thereby impact the profits of the business carried out by the petitioner from unit B. The National Company Law Tribunal is also seized of the matter, which started in the year 2003, it has not seen the final conclusion till date.

8.Considering the above, the writ petition that has been filed by the petitioner stands allowed by directing the petitioner to take steps to revive the GST registration, which stands cancelled. The NCLT is also requested to bring a closure to the Company petition filed in TCP Nos.3 and 20 of 2016 as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

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/ /2022

Sub Assistant Registrar(CS)

mm

To

1.The Assistant Commissioner,
Commercial Tax, Gandhiji Road,
SIDCO Compound,
Theni -2.

2.The National Company Law Tribunal ,
Chennai.

+3 CC to M/s.S.S. CHAKKARAVARTHY, Advocate (SR-18183[F] dated 12/04/2022)

+1 CC to M/s.SPL.GP. (SR-18149[F] dated 12/04/2022)

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