BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.25861 of 2022
and
W.M.P.(MD)No.19992 of 2022

R.Rajalingam ... Petitioner

Vs.

1. The Joint Commissioner of GST (Appeals),
Office of the Commissioner of GST and
Central Excise (Appeals),
No.4, Lal Bahadur Shashtri Marg,
C.R.Buildings,
Madurai – 600 002.

2. The Superintendent,
Dindigul (Rural), Batlagundu Range,
Dindigul – IV Range Office,
No.5/112, NGO Colony,
Balakrishnapuram Pudur,
Dindigul – 624 005. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the 1st Respondent made in impugned order-in-Appeal No.MAD-CGST-JTC-APP-088 dated 16.09.2022 bearing DIN No. 20220959KV000000AEE9D rejecting the Petitioner's Appeal No.94 of 2022 – GSTMDU (online AD3309220058553.

For Petitioner : Mr.K.Suresh

For Respondents : Mr.N.Dilip Kumar,
Senior Standing Counsel
Assisted by Mr.K.Prabu,
Junior Standing Counsel

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 21.01.2022 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 due to COVID pandemic, there was no business transaction and therefore, he failed to furnish the returns. Further, a show cause notice dated 21.01.2022 was issued by the 2nd Respondent seeking explanation for non-filing of the returns. Thereafter, the GST Registration of the Petitioner was cancelled by the 2nd Respondent vide order dated 16.02.2022. As against the said order of cancellation, he was not able to file an application for revocation. Hence, he preferred an appeal before the appellate authority. The appellate authority has rejected the appeal 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. Consequently, connected Miscellaneous Petition is closed.

15.11.2022

Index : Yes / No
Speaking Order : Yes / No

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MOHAMMED SHAFFIQ, J.

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