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W.P(MD).No.27048 of 2022



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.12.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD).No.27048 of 2022

Tvl.Green Park Restaurant,
Represented by Proprietor,
Ramar Panchalikani
S/o. Ramar,
SF755, Main Road, Ullar,
Vasudevanallur,
Tirunelveli,
Tamil Nadu-627758.

... Petitioner

Vs.

1.The Commissioner of GST and
Central Excise,
4, Lal Bahadur Shashtri Marg,
C.R.Buildings, Madurai-2.

2.The Superintendent,
Tenkasi Assessment Circle,
1A & 1B Courtallam Main Road,
Tenkasi, Nanagram, Melagram,
Tamil Nadu-627818.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of the 2nd Respondent in Reference No.ZA3301220523628, dated 14.01.2022 and quash the same and consequently direct the Respondents to revoke the cancellation of Petitioner's GSTIN.33ELEPP0743P1ZO.



For Petitioner : Mr.N.Sudalaimuthu
For Respondents : Mr.N.Dilip Kumar
Senior Standing Counsel
Mr.K.Prabhu
Junior Standing Counsel

ORDER

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 for a continuous period of six months. Consequently, the Registration Certificate was cancelled with effect from 14.01.2022 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 the Petitioner have not filed Goods and Service Tax monthly returns due to health issues. Further, a show cause notice dated 02.12.2021 was issued by the Respondent seeking explanation for non-filing of the returns. Thereafter, the GST Registration of the Petitioner was cancelled by the Respondent vide order dated 14.01.2022. As against the said order of cancellation, he was not able to file an application for revocation in time.



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3. It is submitted by both the learned counsel for the Petitioner and Respondent in unison 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.



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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.*

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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

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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.

01.12.2022

Index : Yes / No
Internet : Yes/ No
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To

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4, Lal Bahadur Shashtri Marg,
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MOHAMMED SHAFFIQ, J.

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